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**02-13-2019**  
**Clerk of Circuit Court**  
**Outagamie County**  
**2013CF001074**

1 STATE OF WISCONSIN CIRCUIT COURT OUTAGAMIE COUNTY

2 STATE OF WISCONSIN,

3 Plaintiff,

4 V. Case No. 13-CF-1074

5 CHONG LENG LEE,

6 Defendant.

7 JURY TRIAL - DAY TWO

9                   BEFORE:           **HONORABLE GREGORY B. GILL, JR.**  
10                                   Circuit Court Judge, Branch IV  
                                  Outagamie County Justice Center  
11                                   Appleton, WI 54911

DATE: **February 25, 2016**

14 APPEARANCES: **CARRIE SCHNEIDER**  
District Attorney  
15 Appearing on behalf of the State

16                   **ANDREW MAIER** and **ALEXANDER DUROS**  
Assistant District Attorneys  
17                   Appearing on behalf of the State

18                    **DEBORAH VISHNY** and **EVAN WEITZ**  
                      Attorneys at Law  
 19                    Appearing on behalf of the Defendant

20 **CHONG LENG LEE**  
21 Defendant  
22 Appearing in person

24 Joan Biese  
Official Reporter, Branch IV  
25 Outagamie County

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1                                    **TRANSCRIPT OF PROCEEDINGS**

2                                    (Proceedings held in chambers.)

3                                    THE COURT:    So we are on the record in  
4                                    *State of Wisconsin v. Chong Lee.*

5                                    We do have Outagamie County District Attorney  
6                                    Carrie Schneider, along with Assistant District  
7                                    Attorneys -- Attorney Andrew Maier.    We have with us  
8                                    representing Mr. Lee is Attorney Deja -- Attorneys  
9                                    Deja Vishny and Evan Weitz.

10                                  There are a few preliminary matters that we  
11                                  needed to address.    The first issue pertains to  
12                                  yesterday there was a hearing which pertained to a  
13                                  warrant and the appearance of Mr. Paul Lee.    That was  
14                                  addressed on the record; however, I did ask that the  
15                                  doors be marked as a closed hearing.    The purpose for  
16                                  that was because the parties were in the middle of  
17                                  jury selection and the court did not want to create  
18                                  any issues for the parties and so, in that vein,  
19                                  thought that there was good cause to close the  
20                                  windows.    I would note that the doors were not  
21                                  locked.    However, that fact notwithstanding, I would  
22                                  also note that nobody attempted to enter the  
23                                  courtroom.

24                                  ATTORNEY VISHNY:    Judge, you know what?    I  
25                                  apologize.    And I don't think this part that you just

1 read was relevant to the defense at all, but I feel  
2 like I probably need to ask Mr. Lee about waiving his  
3 appearance when it comes to objections on his  
4 trials.

5 THE COURT: That's perfectly fine. If you  
6 want -- and if Mr. Lee wants to come back, I don't  
7 care.

8 (Brief recess.)

9 THE COURT: Okay. So we are -- so I did  
10 indicate we were addressing the issue related to the  
11 Paul Lee hearing and, again, I found good cause for  
12 that.

13 The next issue is there was a call itemized as  
14 No. 13. There is reference made to, quotes, my  
15 lawyer. I'm ordering that the reference to the term  
16 "my lawyer" be taken out in both the English  
17 translation as well as the original Hmong  
18 transcription. It will then be replaced with the  
19 word, quote, inaudible.

20 The next issue pertains to Item 199. This is a  
21 letter which the State has proposed to introduce in  
22 its opening argument. The defense has raised an  
23 objection. My understanding is that -- was this a  
24 hearsay or other acts?

25 ATTORNEY SCHNEIDER: This is the family

1           one.

2                   ATTORNEY VISHNY: Yeah. It's a relevancy  
3           objection, Judge. Our position is that --

4                   THE COURT: My bigger concern is other  
5           acts.

6                   ATTORNEY VISHNY: Right. I mean, remember  
7           you told me when you and Steph and them and then --  
8           our belief is that that whole reference there is to a  
9           previous occasion and other acts, that it's an issue,  
10          irrelevancy, other acts, there's also some hearsay  
11          contained in it.

12                  ATTORNEY SCHNEIDER: Well, and my thinking  
13          is it becomes relevant because this all comes down to  
14          his belief that his brother has betrayed him or said  
15          things that are going to put him in a bad light, so  
16          it's a letter written by the defendant to his brother  
17          referencing, you know, talking about having your  
18          family's back or not. I'm not offering the, you  
19          know, when you tell Mao and stuff, and I'm arguing  
20          you said if you don't got family back then don't even  
21          consider us family. I'm not offering that for the  
22          truth of the matter asserted, but he's referencing  
23          having your family's back and having each other's  
24          back because the next line is, well I had your back.  
25          I wouldn't let no one touch you.

1                   THE COURT: And my concern -- my concern  
2                   with that -- and I'm not -- really where my position  
3                   comes down to on 199, if I can look at that again -  
4                   No, that's okay - is at least in the opening  
5                   statement before we've had any ability to get any  
6                   context, I have some concerns about this in terms of  
7                   (a) other acts, because this is sent to Paul,  
8                   correct?

9                   ATTORNEY SCHNEIDER: Yes. They're talking  
10                  about arguing, so somehow just people arguing falls  
11                  in the realm of other acts?

12                 THE COURT: No. No. What concerns me is  
13                  he said, well, I had your back. I wouldn't let no  
14                  one touch you. That's my concern is my suggestion is  
15                  that he's implying that there was another incident.

16                 ATTORNEY SCHNEIDER: That's exactly this  
17                  shooting.

18                 THE COURT: We don't know that.

19                 ATTORNEY SCHNEIDER: I don't know that --

20                 THE COURT: I mean, that's my problem. I  
21                  don't have any context to it for opening argument  
22                  without -- without Paul Lee being able to give me  
23                  some context. That's my --

24                 ATTORNEY VISHNY: Right. You're calling  
25                  him, he can comment on that. We believe it actually

1           refers to a prior incident where Paul Lee was shot.

2                   THE COURT: I think it may ultimately come  
3           in, but I think I need some -- Paul Lee to give me  
4           some context to explain that, and that's my problem  
5           with it at this point.

6                   ATTORNEY SCHNEIDER: But if other people  
7           come in and testify that Paul and our victim were  
8           potentially fighting or engaged in arguments or that  
9           Paul might have taken a swing at our victim, then I  
10          want to argue that this is completely relevant to  
11          that fight.

12                   THE COURT: I'm simply making this ruling,  
13          just so that the parties understand, as it relates to  
14          the opening argument portion. I don't have enough of  
15          a frame of reference. So this is not dispositive of  
16          how I would look at it at trial, it's simply in  
17          opening argument I don't have enough context. That's  
18          my difficulty.

19                   ATTORNEY SCHNEIDER: Okay.

20                   THE COURT: 204. 204, I'm looking at the  
21          defendant -- the defense had objected to the  
22          following language: Know your boys, I always told  
23          you that, I don't look for trouble, but when trouble  
24          comes, I will end it. I will end it. That's why I  
25          really don't want to hang out with trouble seeking



1 people because I know myself, no -- I think it's  
2 hesitating, and then it goes on to say --

3 ATTORNEY SCHNEIDER: Hesitation in a bigger  
4 letter.

5 THE COURT: Okay. The -- I think it's  
6 permissible. The only part that I have concern about  
7 is the first sentence that says, know your boys, I  
8 always told you that. I think when we're talking  
9 about present sense where he says, I don't look for  
10 trouble but when trouble comes, I will end it, I will  
11 end it, that's why I don't want to really hang out  
12 with trouble seeking people, I think that's very much  
13 present context. The first sentence, I always told  
14 you that, again, if you -- if you include that within  
15 the overall context, it suggests that in the past and  
16 in the present he's of the opinion that, hey,  
17 whenever trouble has come my way, I've taken care of  
18 it, as opposed to this incident, and so that's my  
19 concern there.

20 ATTORNEY SCHNEIDER: Okay.

21 THE COURT: The second sentence I'd allow  
22 you to read.

23 ATTORNEY SCHNEIDER: I will end it, that's  
24 why I didn't really want to hang out with trouble  
25 seeking people because I know myself, no

1           hesitation.

2                   ATTORNEY VISHNY:   Okay.   So for the record  
3           the defense did object to that as other acts  
4           evidence.

5                   THE COURT:   And I did -- I should have  
6           noted that.   I understood that it was.

7                   ATTORNEY VISHNY:   Well, there is a sentence  
8           in the middle that we think lays the context for it  
9           that he's referring to things that happened in  
10          Wausau, Oshkosh, anywhere, and, you know, I  
11          understand why the State is not going to read that  
12          because that -- but I think that when you look at  
13          that sentence, it puts in Oshkosh that he's talking  
14          about other acts, so that's what our objection is.

15                  ATTORNEY SCHNEIDER:   And I understand that,  
16          but I think he's also saying --

17                  THE COURT:   The way that I look at it is  
18          there is two parts to this.   I'm going to -- if there  
19          is trouble here, I'm going to solve it, just like I  
20          solved trouble elsewhere, and so I don't think  
21          reference to the -- and the State has excluded the  
22          Wausau, Oshkosh, anywhere.   I don't know about those  
23          incidents, I'm not -- that's not what's at issue, but  
24          I think he's also -- as I read this statement,  
25          there's -- it's somewhat a part and parcel where he's

1 saying, I'm not only going to solve the problem here,  
2 I've done it in the past.

3 ATTORNEY VISHNY: Okay. We understand the  
4 court's ruling.

5 THE COURT: I'm going to X out that first  
6 part. So those are Items 199 and 204. I wasn't  
7 certain whether --

8 ATTORNEY SCHNEIDER: She wasn't -- there  
9 was no objection to the bottom chunk.

10 THE COURT: Okay. There were also --

11 ATTORNEY VISHNY: Yeah. We don't object to  
12 the bottom.

13 ATTORNEY SCHNEIDER: We came to agreement  
14 on some of the other ones.

15 ATTORNEY VISHNY: Okay.

16 ATTORNEY SCHNEIDER: I think that was all  
17 the ones.

18 ATTORNEY VISHNY: I think the only issue  
19 that's left is the issue of the phone call, right?  
20 The other stuff, the revocation of the PO you took  
21 out.

22 ATTORNEY SCHNEIDER: Right.

23 THE COURT: I should note that we did -- I  
24 should note we did go on the record in this matter.  
25 Mr. Lee was not present. However, before going on

1           the record, Attorney Vishny did consult with Mr. Lee.  
2           I will confirm with Attorney Vishny, but Mr. Lee did  
3           waive his appearance for purposes of addressing these  
4           pretrial matters and objections. That fact  
5           notwithstanding, certainly Mr. Lee will have every  
6           right to be included in all portions of the  
7           proceedings hereafter. Is that a --

8                     ATTORNEY VISHNY: Yes, that's correct,  
9           Judge.

10                    THE COURT: Very good.

11                    ATTORNEY SCHNEIDER: You now have the list  
12           of prior convictions.

13                    THE COURT: Yes.

14                    ATTORNEY SCHNEIDER: I think for the people  
15           coming today there is an agreement.

16                    ATTORNEY VISHNY: Yes, we agree.

17                    ATTORNEY SCHNEIDER: And we'll just address  
18           the other ones as we need to.

19                    THE COURT: The last thing I wanted to  
20           discuss with the parties, typically, and I say  
21           typically because usually we finish voir dire in the  
22           morning and then we go directly into opening. My  
23           typical practice is to read at the outset before we  
24           start No. 50 which is the preliminary instructions.  
25           I do read No. 55, note taking permitted; No. 57,

1 instruction on jury questioning of witnesses; and  
2 then I would read No. 101 which is opening  
3 statements. Is everyone okay with that? If you want  
4 to look at what exactly the verbiage is in those, I  
5 have them right here.

6 ATTORNEY VISHNY: Okay. Let me just ask,  
7 57, note taking is being permitted?

8 THE COURT: Note taking is permitted as is  
9 questioning.

10 ATTORNEY VISHNY: So -- well, one minute.  
11 Okay. The practice in Milwaukee for whatever it's  
12 worth is to read the substantive instructions and  
13 140, so to help the jurors know what they have to  
14 decide.

15 THE COURT: I have to see what 140 is.  
16 That's lengthy because there is a lot of counts here.  
17 140 is burden of proof, reasonable doubt instruction.  
18 So, you know, I think the jurors know what the  
19 charges are, you know, in this case. I don't know  
20 what position the State's going to take, even  
21 though -- this is typically how I have done this is  
22 I'll -- after everyone is done questioning, I'll  
23 receive a question. I'll ask Attorneys Vishny and  
24 Weitz or -- and of course the State's attorneys.  
25 Then what I do is I will have you come up, I'll show

1           you the question, we don't -- what do you think, and  
2           then, if it's appropriate, I ask it, and then if not,  
3           I don't. And I -- I think I also give the  
4           instructions in here saying I will determine if your  
5           question is legally proper. No adverse inference  
6           should be drawn. So I included that. So I can read  
7           -- I can read 50, 140, explain to them what the  
8           burden of proof is, note taking, questions, and then  
9           opening -- opening arguments.

10                   ATTORNEY VISHNY: So it's the defense  
11           position that the substantive instructions should be  
12           read here, but if you're not going to, you're not  
13           going to. I'm not going to argue the point. I mean  
14           I think the jury should know what they have to decide  
15           and -- but I realize that means four separate jury  
16           instructions, you know.

17                   THE COURT: I mean I've never done it  
18           before.

19                   ATTORNEY VISHNY: Okay. I'm prepared for  
20           the quick rule.

21                   THE COURT: I'm satisfied we can address it  
22           at closing and final instructions.

23                   Anything else, Attorney Schneider?

24                   ATTORNEY SCHNEIDER: No. After opening  
25           then I think our game plan is we may need a little

1 bit of time to set up tech stuff in the room so we  
2 can make sure to take some stuff --

3 THE COURT: We'll do --

4 ATTORNEY WEITZ: I think we can get  
5 openings done by lunch and a lunch break.

6 ATTORNEY SCHNEIDER: See where we finish.

7 THE COURT: I don't see any reason why as  
8 soon as I give the instructions we can't go right to  
9 openings, finish openings, and that will probably be  
10 right around lunchtime, or we'll make it around  
11 lunchtime.

12 (In open court outside the presence of the  
13 jury.)

14 THE COURT: We are on the record in *State*  
15 *of Wisconsin v. Chong Lee*.

16 Mr. Lee does appear with his counsels, Attorney  
17 Evan Weitz and Deja Vishny. The State of Wisconsin  
18 is also present and in court represented by Outagamie  
19 County District Attorney Carrie Schneider, as well as  
20 Assistant District Attorneys Andrew Maier and Alex  
21 Duros.

22 And at this time, Attorney Schneider, are we  
23 prepared to bring in the jury?

24 ATTORNEY SCHNEIDER: I think we are,  
25 Judge.

1                   THE COURT: Attorney Vishny, are we  
2                   prepared to bring in the jury?

3                   ATTORNEY VISHNY: Yes.

4                   THE COURT: Okay. Before do I bring in the  
5                   jury, I would make one comment to those in the  
6                   gallery. I would ask that you please have your cell  
7                   phones turned off. Certainly we're very happy to  
8                   have you here, but anything can -- additional noises  
9                   or sounds can cause a disruption, and so I would ask  
10                  as mentioned that you do please turn off your cell  
11                  phones at this time.

12                  Likewise, to the extent that you're able to, I'd  
13                  ask that you minimize your in and out movements. I  
14                  understand sometimes you do need to leave, but as  
15                  little as possible would certainly be appreciated.

16                  And with that, I'll ask that we please rise, we  
17                  will bring in the jury.

18                  (The jury was escorted into the courtroom.)

19                  THE COURT: Good morning everyone. The  
20                  first thing we will need to do is at this time we  
21                  will need to swear you in, so I would ask that you  
22                  please raise your right hand.

23                  (Clerk administers oath to jury panel.)

24                  THE COURT: You may be seated.

25                  And as I may have explained to you yesterday, we



1           begin with the opening statements presented by -- by  
2           each party. However, before I do that, or before  
3           they do that and I turn the trial over to the  
4           attorneys and the parties, I'd like to give you some  
5           brief instructions to assist you in -- and in guiding  
6           you through the process. That said, these are only  
7           the preliminary instructions. I will give you more  
8           thorough discussions and more thorough instructions  
9           at the end of the proceedings, but I did want to give  
10          you at least some initial brief instructions and so I  
11          will do so at this time.

12                 Now, it is your job to decide the case based  
13          solely on the evidence presented at trial and the law  
14          given to you by this court. Anything that you see or  
15          hear outside the courtroom is not evidence.

16                 You should not let any personal feelings about  
17          race, religion, national origin, sex or age affect  
18          your consideration of the evidence.

19                 You are not to begin your deliberations and  
20          discussion of this case until all of the evidence is  
21          presented and I have instructed you on the law. Do  
22          not discuss this case amongst yourselves or with  
23          anyone until your final deliberations in the jury  
24          room.

25                 As I had told you yesterday, we will stop from

1           time to time to recess. Additionally, there may be  
2           times where I need to excuse you from the room for me  
3           to address legal arguments from the attorneys.

4           If you come in contact with the lawyers or  
5           witnesses, as I mentioned to you yesterday, you are  
6           not to speak with them. For their part, I've also  
7           instructed the lawyers and the witnesses to not speak  
8           with you.

9           You should not listen to any conversations about  
10          this case.

11          As I had told you last night, you are not to do  
12          any research that you personally think might be  
13          helpful to you in understanding the issues presented.  
14          Do not investigate this case on your own or visit any  
15          scene. Do not read any newspaper reports or listen  
16          to any news reports on radio or television about this  
17          trial. Do not consult dictionaries, computers,  
18          websites or other reference materials for additional  
19          information. Do not seek information regarding the  
20          public records of any party or witnesses in this  
21          case. As I had told you last night, any information  
22          you obtain outside the courtroom could be misleading,  
23          inaccurate or incomplete. Relying on this  
24          information is unfair because the parties would not  
25          have the opportunity to refute, explain or correct

1           it.

2                   Do not communicate with anyone about this trial  
3           or your experience as a juror while you are serving  
4           on this jury.

5                   Do not use a computer, cell phone or other  
6           electronic device with communication capabilities to  
7           share any information about this case. For example,  
8           you are not to communicate by blog, e-mail, text  
9           message, Twitter, or in any other way on or off the  
10          computer.

11                  Do not permit anyone to communicate with you,  
12          and if anyone does, despite so -- despite you telling  
13          them not to, you should report that to me.

14                  I can appreciate that it is tempting that when  
15          you go home tonight you would desire to discuss this  
16          with another individual, but do not do so. This case  
17          must be decided solely by you, the jurors, based on  
18          the evidence presented in this courtroom. People not  
19          serving on this jury have not heard the evidence and  
20          it is improper for you to influence your  
21          deliberations and decisions in this case.

22                  After this trial is completed, you are free to  
23          communicate with anyone in any manner.

24                  And again, these rules are designed to assure  
25          that you remain impartial throughout the trial.

1           If any of you have a reason to believe that  
2           another juror has violated these rules, please  
3           immediately report that to me.

4           You are to decide the case based solely on the  
5           evidence offered and received at trial.

6           Now, I also think that it is fair for you to  
7           understand the burden of proof and the presumption of  
8           innocence. Now, in doing so, and in performing your  
9           functions, you are to act with judgment, reason and  
10          prudence.

11          Defendants in a case such as this are not  
12          required to prove their innocence. The law presumes  
13          every person charged with the commission of an  
14          offense to be innocent. This presumption requires a  
15          finding of not guilty unless in your deliberations  
16          you find it is overcome by evidence which satisfies  
17          you beyond a reasonable doubt that the defendant is  
18          guilty.

19          The burden of establishing every fact necessary  
20          to constitute guilt is upon the State. Before you  
21          can return a verdict of guilty, the evidence must  
22          satisfy you beyond a reasonable doubt that the  
23          defendant is guilty.

24          If you can reconcile the evidence upon any  
25          reasonable hypothesis consistent with the defendant's

1           innocence, you should do so and return a verdict of  
2           not guilty.

3           Now the term reasonable doubt means a doubt  
4           based upon reason and common sense. It is a doubt  
5           for which a reason can be given, arising from a fair  
6           and rational consideration of the evidence or lack of  
7           evidence. It means such a doubt as would cause a  
8           person of ordinary prudence to pause or hesitate when  
9           called upon to act in the most important affairs of  
10          life.

11          A reasonable doubt is not a doubt which is based  
12          on mere guesswork or speculation. A doubt which  
13          arises merely from sympathy or from fear to return a  
14          verdict of guilt is not reasonable doubt. A  
15          reasonable doubt is not a doubt such as may be used  
16          to escape the responsibility of a decision. While  
17          your duty is to give the benefit of every reasonable  
18          doubt, you are not to search for doubt, you are to  
19          search for the truth.

20          Additionally, throughout this case I do allow  
21          note taking. That will be during the evidentiary  
22          portions of the proceedings only. That said, you are  
23          not required to take notes. You may do so, except as  
24          I've indicated during the opening and closing  
25          arguments. The court will provide you with

1 materials. However, in taking notes I ask and I  
2 direct you to be careful that your note taking does  
3 not distract you from carefully listening to and  
4 observing the witnesses.

5 You may rely on your notes to refresh your  
6 memory during your deliberations, otherwise keep them  
7 confidential. After the trial the notes will be  
8 collected and destroyed.

9 Additionally, you will be given the opportunity  
10 to ask written questions of the witnesses called to  
11 testify in this case. That said, you are not  
12 encouraged to ask a large number of questions because  
13 that is primarily the responsibility of counsel.

14 Questions may be asked in the following manner.  
15 After both lawyers have finished questioning a  
16 witness, and only at that time, if there are  
17 additional questions you would like to ask a witness,  
18 you may then seek permission to ask that witness a  
19 written question. Should you desire to ask a  
20 question, simply raise your hand and the bailiff will  
21 collect your question. Questions must be directed to  
22 the witness and not to the lawyers or to myself.  
23 After I've had an opportunity to consult with  
24 counsel, I will determine if your question is legally  
25 proper. If I determine that your question may be

1 properly asked, I will ask it. If I do not allow the  
2 question to be asked, you should not draw any adverse  
3 inference about the refusal to ask that question.

4 Now, at this point in time the lawyers will be  
5 making their opening statements. The purpose of the  
6 opening statement is to outline for you what each  
7 side expects to prove so that you will better  
8 understand the evidence as it is introduced during  
9 the trial.

10 I must caution you, however, opening statements  
11 are not evidence.

12 With that, Attorney Schneider, are you prepared  
13 to proceed with your opening statement?

14 ATTORNEY VISHNY: I am, Your Honor.

15 THE COURT: Very good. You may do so, and  
16 please feel free to adjust the podium if need be.

17 ATTORNEY SCHNEIDER: Okay. Thank you.

18 Good morning to each of you. First, again, as I  
19 said yesterday, I do want to thank you for your time  
20 and attention in this case over the next few days.

21 Your job is to act as the judge of the facts and  
22 the testimony that you're going to hear during these  
23 days of trial. It's an important job and it's one  
24 that I know you will give your full attention to.

25 Opening statements, Judge has kind of already

1 informed you, I say they're kind of like previews for  
2 movies. They kind of give you an explanation of  
3 what's coming up, what witnesses you're going to hear  
4 from, what evidence and testimony is going to be  
5 presented to you. Your job is to listen and examine  
6 the evidence and the testimony as it comes in from  
7 the witnesses in this case.

8 As you were instructed yesterday, the State in  
9 this case has charged this defendant with several  
10 crimes. They include a crime of first-degree  
11 intentional homicide for causing the death of Joshua  
12 Richards on December 8th, 2013. There is an  
13 additional charge for possession of a firearm by a  
14 felon for December 8, 2013. There are then four  
15 counts of intimidation of a witness. They relate to  
16 different people in the case. One relates to Paul  
17 Lee, one relates to Joe Thor, one relates to  
18 Stephanie Thao, and the last one relates to Melanie  
19 Thao. And then the last charge is a count of  
20 solicitation of perjury. So before I start talking  
21 to you about the evidence and the testimony that  
22 you're going to hear, I want to talk about those  
23 crimes and what the State must prove to you in this  
24 case.

25 A lot of TV shows out there, you hear a lot of



1           phrases, but the court's going to give you a set of  
2           jury instructions at the very end of this case that  
3           will give you the law that you are to be guided by.  
4           First-degree intentional homicide contains two  
5           elements. The first element that the State must  
6           prove to you is that the defendant caused the death  
7           of Joshua Richards. The second is that he acted with  
8           the intent to kill Joshua Richards.

9           Acted with the intent. You'll hear instructions  
10          about it, but it means did he have the mental purpose  
11          to kill or was he aware that his conduct was  
12          practically certain to cause the death of another.  
13          You're also going to hear further instructions about  
14          intent. Intent does not require that it exist for  
15          any length of time. It need not be planned or  
16          considered for a day, a week or even a minute. It  
17          can be formed at the instant before the act is  
18          committed. So the State will tell you that the  
19          evidence and testimony you will hear is that the  
20          intent in this comes when he raises his arm with that  
21          loaded gun, points it at Joshua Richards' head, pulls  
22          the trigger and sends a bullet into his head.

23          Count 2 in this case, possession of firearm by a  
24          felon. December 8th, 2013, that the defendant  
25          possessed a firearm and that he had been previously

1 convicted of a felony prior to that date.

2 Then we get to the counts of intimidation of a  
3 witness. Again, there is four charges of -- they're  
4 all the same but they relate to different people. So  
5 the first element is that each person was a witness,  
6 a person who has been called or is -- who is expected  
7 to be called to testify; second, that the defendant  
8 attempted or pre -- attempted to prevent or dissuade  
9 that person from attending or giving testimony at a  
10 proceeding authorized by law; third, that he acted  
11 knowingly and maliciously; that he knew the person  
12 was a witness and acted with the purpose to prevent  
13 them from attending or testifying; and last, that he  
14 did commit this act in connection with a trial,  
15 proceeding or inquiry in a felony case in which he  
16 was charged. You're going to hear about intimidation  
17 of a witness as it relates to his conduct to Paul  
18 Lee, Joe Thor, Stephanie Thao and Melanie Thao.

19 The last count is solicitation of perjury, and  
20 the State has charged that to have occurred on  
21 January 25th, 2014. Solicitation is kind of a weird  
22 word, but Judge will give you a further instruction  
23 on it. But it as it relates to solicitation of  
24 perjury, it relates to asking or advising another to  
25 commit the offense of perjury. So asking or advising

1           another to - there is five elements for perjury -  
2           make a statement under oath, the statement would be  
3           false when it was made, the witness knows that it's  
4           false when it's made, the statement would have been  
5           made in a proceeding before a court, and the  
6           statement was material to the proceeding.

7           At the conclusion of the case, I'm going to ask  
8           you to examine those seven crimes again, and I will  
9           ask you based upon the evidence and testimony to  
10          return a guilty verdict for each of those crimes.

11          I want to talk just briefly about burden of  
12          proof. The State bears the burden of proof in a  
13          criminal action. It is the State that brings forth  
14          the charges. It's our proof and our burden to prove  
15          to you beyond a reasonable doubt that the defendant  
16          committed the offenses of first-degree intentional  
17          homicide for intentionally firing a firearm and  
18          causing the death of Joshua Richards, for possessing  
19          a firearm, for the four counts of intimidation.

20          What is reasonable doubt? The judge will give  
21          you further instructions at the end, but you'll be  
22          instructed that it's really a doubt for which you can  
23          give a reason. You're not asked to guess or  
24          speculate on remote possibilities. You use your  
25          common sense and your life experiences. You bring

1           those with you. As the court will instruct you, your  
2           job is to search for truth.

3           You're going to hear about this offense, these  
4           offenses, and you're going to hear, for many intents  
5           and purposes, January 8 -- December 8th, 2013, was a  
6           normal Saturday night in Appleton, Wisconsin. It's  
7           what you would normally expect downtown Appleton.  
8           People were out at Luna Lounge, they were having a  
9           good time, the evidence and testimony will show.  
10          You'll hear from evidence and testimony that it was  
11          just another Saturday night like many others where  
12          different groups of people who don't even know each  
13          other are at the bars together.

14          Evidence and testimony will tell you it's just  
15          another bar closing time, people are getting ready to  
16          leave, but the evidence and testimony will tell you  
17          that changes and it was only a normal Saturday night  
18          until.

19          Evidence and testimony will tell you that there  
20          was a series of intentional acts and choices made by  
21          this defendant that caused the death of Joshua  
22          Richards. Evidence and testimony to show that he  
23          intentionally had a firearm on his person, that he  
24          intentionally walked to the area where his brother  
25          Paul Lee was standing with others, that he

1 intentionally walked to that area where Paul may have  
2 been arguing or fighting with Josh Richards, that he  
3 intentionally raised his right hand, held out his  
4 arm, he then intentionally aimed the gun at Joshua's  
5 left side of his face, and the evidence and testimony  
6 will tell you that he then intentionally pulled the  
7 trigger sending a .25 caliber bullet into Josh's  
8 head, evidence and testimony will show you, right by  
9 his left ear.

10 Evidence and testimony will show you that he  
11 then intentionally turned and ran away, intentionally  
12 ran back to Shark's Pool Hall. Evidence and  
13 testimony we believe will show you that he then  
14 intentionally dumped six more .25 caliber bullets  
15 into the toilet at Shark's Pool Hall. Evidence and  
16 testimony that he continued to run. Evidence and  
17 testimony that that morning, very early, he was  
18 heading to Milwaukee and stayed at a Hilton.

19 You will learn, the evidence and testimony, that  
20 the actions after that offense form the basis for the  
21 intimidation of witness and the solicitation of  
22 perjury charges. Evidence and testimony the State  
23 believes also allow you to consider did he commit the  
24 offense of first-degree intentional homicide and  
25 possession of a firearm.

1           You will hear evidence and testimony and  
2           discussions about Paul and Joe, both who were  
3           witnesses, not showing up for court, disappearing,  
4           discussions about Melanie and Stephanie Thao who were  
5           witnesses, not having them show up for court,  
6           discussions and -- about and with Paul Lee on January  
7           25th of 2014 where this defendant was telling Paul  
8           what to come in and say at a court hearing.

9           You're going to hear more about that Saturday  
10          night. You'll hear from Brittany Olson. Brittany  
11          was Josh's girlfriend at the time you will find out.  
12          You'll learn from Brittany that Josh was friends with  
13          a gentleman who had kind of started one of these bus  
14          tour companies where they get a group of people  
15          together in Green Bay, they bring the bus down to  
16          Appleton for a night, and they can go out downtown  
17          and then they go back to Green Bay at the end of the  
18          night. You'll learn that that's the group Josh and  
19          Brittany came with others.

20          You'll learn from Brittany they went to  
21          Anduzzi's bar in Appleton, then they went to Luna.  
22          You'll learn she's not really familiar with Appleton  
23          downtown. I think this was -- you'll hear from her  
24          this was the first time she'd ever been at Luna.  
25          You'll hear from Brittany there weren't any issues,

1 arguments or fights with anyone when she was out with  
2 Josh that night, there wasn't anybody they had any  
3 issues with or anything that caused any troubles,  
4 that is, until the last 13 seconds of Josh's life.

5           You'll hear from Brittany and from others it was  
6 getting to be closing time, about 1:50 a.m., and  
7 Brittany will tell you they were at the dance floor  
8 area of Luna. And you're going to hear, for those of  
9 you who aren't familiar, many different exhibits of  
10 Luna and drawings and diagrams which help form the  
11 layout, because there is a couple bar areas.  
12 Evidence and testimony will show you, actually  
13 through an exhibit made by a Wisconsin state trooper,  
14 how that bar goes up and down and there's different  
15 levels throughout. But Brittany will tell you that  
16 she was walking up in this area, going to go to the  
17 bathroom, getting to be bar close, and in an area you  
18 may hear through testimony it may be referred to as  
19 like a landing area at the top of a set of stairs or  
20 like a foyer area or a hallway, but you'll learn that  
21 there is an area at Luna where to get to the bathroom  
22 you have to go down steps, and when you come up those  
23 steps, there's kind of an entry area. You'll learn  
24 through diagrams that's really the pathway to get  
25 into the bar from the front door.

1           Brittany will tell you that they were in this  
2           area, there was a group of other people standing in  
3           that area, many of them were Asian she will tell you.  
4           She will tell you they stopped. She didn't really  
5           have any concerns. You'll learn from Brittany that  
6           Joshua is part Asian so it wasn't any issue for her.  
7           She wasn't feeling there was going to be any issues  
8           going on.

9           You'll learn that at some point during that  
10          time, through witness -- witnesses, that some words  
11          might have been exchanged. You're going to learn  
12          from Dan Kersten who is a security person at Luna  
13          stationed by that front door that this was an area he  
14          even at the front door could look and see over to his  
15          left down around. You'll learn from Dan Kersten it  
16          wasn't anything that drew his attention where he felt  
17          he had to go in, stop what was going on, call for  
18          extra security, do anything of that nature at all.

19          You'll also hear from Mike Verheyden, and Mike  
20          is someone who came on that bus trip with Josh and  
21          Brittany, had just met them that night, but Mr.  
22          Verheyden will tell you it was getting about bar  
23          closing time, he was finishing his beer and going to  
24          go out and have a cigarette, and when he went to do  
25          that and went through the entry that goes from the



1 bar to this landing area or this hallway or foyer, he  
2 could see Josh was there and there was a group of  
3 Asians. And Mr. Verheyden will tell you he didn't  
4 really know what was going on, but he walked to that  
5 area just to make sure nothing was happening, wanted  
6 to stand by, wasn't sure -- nothing where he felt he  
7 had to run up there to help, but he just wanted to go  
8 stand by in case there was anything. And Mr.  
9 Verheyden will tell you there might have been some  
10 words, but then, from his perspective, things were  
11 really calming down, there was nothing to it, he  
12 thought everybody was separated. So he turned to go  
13 walk out and have his cigarette. And Mr. Verheyden  
14 will tell you when he turned, he did that, he then  
15 heard a boom, a noise, and he will tell -- Mr.  
16 Verheyden will tell you he turned and looked around  
17 and Josh was now down on the floor.

18 You will learn from other witnesses, including a  
19 gentleman named Tou Shoua Lee, that he knew this  
20 defendant, Chong Lee, he knew Paul Lee, Joe Thor,  
21 some others who were out with this defendant, that he  
22 saw this group standing in that landing or that foyer  
23 area, that he didn't really feel he needed to run up  
24 but he just wanted to go check. So Mr. Lee will tell  
25 you he went up to that area, if something was going

1 to happen, just to be kind of like, hey, calm things  
2 down maybe, but nothing so concerned where he felt he  
3 had to get up there right away or that he saw  
4 anything significant. Mr. Lee will likely tell you  
5 that he saw Paul Lee try to take a swing at Josh, and  
6 then you will hear in a split second in time, no  
7 reason, without any warning, the life of Joshua  
8 Richards was changed forever. Mr. Lee will tell you  
9 that he saw Chong Lee come into that area, he saw  
10 Chong Lee's hand go up as if he was going to punch or  
11 strike at Josh, and then boom and he sees smoke. He  
12 then sees Josh down on the ground.

13 You will learn from many people at that point it  
14 was chaotic. You will learn and hear and see through  
15 video evidence people started running out that door,  
16 like trains of people running out that door.

17 You will learn and hear that officers arrived  
18 probably a very quick response time because Appleton  
19 this night has foot patrols, so they have groups of  
20 officers you'll learn that literally walk College  
21 Avenue on different nights, most likely the weekends,  
22 and 911 calls start coming in, two officers across  
23 the street come over, and they found a bar, a front  
24 foyer area that was extremely dark, it's only lit,  
25 you will learn through evidence and testimony,

1 through black lights, the lights that like reflect  
2 the color white, reflect other colors and clothing,  
3 that the music was still on, it was loud.

4 They got there, tried to see what was going on  
5 with Josh. Others who were there were trying to call  
6 out to him, trying to see what was happening. And  
7 you will learn and hear that there was no response  
8 from Josh at all.

9 You will hear testimony and see testimony about  
10 where people were; and you're going to learn about  
11 the video system that Luna had at the time, and  
12 you'll learn that they had one camera that I commonly  
13 refer to as Camera 1 that is the area that is the  
14 camera looking at the front doors of Luna, so it --  
15 you will see images of the front door area, you'll  
16 see at times people coming in and out of those front  
17 doors, you'll see people standing there talking.

18 Some of the images you're going to see Mr.  
19 Kersten standing in kind of his post, security is on  
20 the back of his shirt, he's looking at areas watching  
21 what's going on.

22 You're also going to see then what I refer to as  
23 Camera 2. There is a camera that shows the bar area,  
24 the upper bar, but you will learn and see that there  
25 is a void and there is no camera in this foyer

1           landing area. But you'll learn through the bar  
2           camera and Camera 1 you can kind of determine when  
3           someone leaves the bar area, they go right into this  
4           foyer area.

5           So you will see evidence and testimony that  
6           shows in about a 13-second span of time is when  
7           Josh's life changed forever, and you will see that it  
8           is about a 13-second span of time from when Mr. Lee  
9           goes off of view from the bar camera, he's then in  
10          the foyer area, and about 13 seconds later you see  
11          Dan Kersten and others at that front door turn and  
12          react to hearing that shot.

13          As I previously said, you're going to see then  
14          masses of people exit. You will hear through  
15          evidence and testimony we're going to identify who  
16          those people were, going to identify them by  
17          clothing. You're going to see, though, in this night  
18          vision camera mode, colors are either black, white or  
19          gray. There is really nothing else. And even a  
20          striped or polka dot shirt may come up as one solid  
21          color because it's a different type of camera and how  
22          the light absorbs.

23          You will see in that video, though, following  
24          there is a sequence where Chong Lee runs out the  
25          door. Immediately behind him is a woman named Alyson

1 Blom who was a friend of Chong's, with him all night,  
2 and immediately following is Brittany, Brittany  
3 Olson, Josh's girlfriend. And you will see as they  
4 go out the door Brittany start to reach out for  
5 Alyson, and you will hear testimony from witnesses  
6 who saw one girl just outside of Luna tackle another  
7 girl and start yelling and punching and fighting, and  
8 you will hear that this young woman was in a state of  
9 high emotion, terror, she starts striking Brittany --  
10 starts striking Alyson. You will hear comments that  
11 were made, your boyfriend shot my boyfriend. You  
12 will hear from males who were standing by outside who  
13 saw this fight, heard comments, started pulling the  
14 girls apart, kind of asking what -- what's going on,  
15 what's that about.

16 You'll learn that Brittany then went back inside  
17 the bar, Luna, to try to go see how Josh was doing.

18 The video will show you, and testimony will  
19 confirm, Joe Thor, Paul Lee and Phong Lee run out in  
20 one sequence, and you can see them turn to the right,  
21 and evidence and testimony will show you can see them  
22 going up North Division Street. You'll learn that  
23 they ultimately went all the way back to Josh's house  
24 -- Joe's house, I'm sorry, which is at 1745 North  
25 Harriman Street.

1           Video will also show you that when Chong, this  
2           defendant, exits, he exits the door and turns to the  
3           left. You'll hear testimony from witnesses then, a  
4           woman named Talisa and another woman named Marissa,  
5           who were at Sharks who remember around closing time  
6           someone coming in, person who went into the bathroom  
7           for a period of time, someone who had asked them  
8           could they give him a ride; and the girls will tell  
9           you they gave this person a ride to a location he  
10          said he needed to go to his mom's house. And Officer  
11          Nagel will tell you that he met with those women, he  
12          determined that they went and drove a witness they  
13          later identified as the defendant to an address on  
14          North Harriman that was one house just to the south  
15          of where Joe Thor lives.

16          You will learn that Joe Thor, Paul Lee, Phong  
17          and this defendant then all met up back at Joe's  
18          house. You will learn Joe, Paul and Phong were  
19          surprised by what had just happened at Luna.

20          You'll learn officers at the scene of Luna  
21          locate a .25 caliber shell casing on that stairs that  
22          they describe, this landing is kind of at the top of  
23          the landing. You're going to see some cell phone  
24          video at some point that shows you how dark this  
25          landing area is, you'll see how much light, I'll say

1 the black lights provide or don't provide. You'll  
2 also see how chaotic it was.

3 You'll hear testimony that over the next few  
4 days Chong talked to people about what had happened.  
5 You'll hear that he talked to Joe Thor, that he  
6 talked to his brother Paul. You'll hear that Paul  
7 heard a comment Chong said to him, I fucked up, I  
8 shot that guy. You'll hear from Joe Thor that on  
9 that Sunday morning, within a few hours after the  
10 shooting at Luna, he and Chong were heading down to  
11 Milwaukee. They went there, they checked into a  
12 Milwaukee Hilton. Ended up going to a party at some  
13 friend's house down at Milwaukee, and you're going to  
14 hear from those witnesses. There is a series of  
15 witnesses, Peter Moua, Xai Thao, Kong Vang, Xai --  
16 I'm sorry, Dia Vang, and Joseph Vang, and some of  
17 those witnesses will tell you while they were down in  
18 Milwaukee, they know Chong, some of them are  
19 originally from Appleton area, but while there this  
20 defendant told them he had shot a person, shot  
21 someone at Luna. They had talked about -- and you  
22 will learn that he stayed in Milwaukee one night and  
23 then he returned home.

24 You will learn that over the next couple of days  
25 Chong met up with his friend, Stephanie Thao, and her

1 sister Melanie Thao, and you will learn that on one  
2 night they went out to eat at a sushi restaurant, and  
3 this is in the days immediately after, and Chong  
4 tells them that he was involved in the shooting, he  
5 did it. You will learn from the girls that the next  
6 night they went out to eat at Buffalo Wild Wings.  
7 And I didn't ask this in voir dire, but you'll also  
8 hear that referred to as BW3s or B-dubs, kind of a  
9 nickname for Buffalo Wild Wings. But while they're  
10 there, Chong again says and tells them that he was  
11 involved in the shooting.

12 You will learn that in the days following the  
13 incident officers tried to follow leads, they looked  
14 at that video, and you will hear described for you,  
15 and in many ways almost recreated by the evidence in  
16 this case, through that Luna video they were able to  
17 capture still images and they started printing out a  
18 series of still images trying to identify who is in  
19 this picture, who is this, what's this person's name.  
20 They were able to break down that sequence of  
21 everybody running out the door to establish who was  
22 in that landing or that foyer area when the shot went  
23 off, able to establish from that bar video who had  
24 entered that foyer area at what time. And they  
25 developed this series of photos.



1           You will hear that for all intents and purposes  
2           most of the witnesses you're going to hear from the  
3           State were not people who in the day after, the day  
4           of, few days later, a week later, months later,  
5           picked up the phone to call the police and say I have  
6           information I want to share about that shooting.  
7           You'll learn one exception to that was a woman named  
8           Dalinda Guzman, and you'll learn Dalinda is Alyson's  
9           friend, Alyson Blom, who knew Chong was out with his  
10          friends. Dalinda calls the police and tells them she  
11          was out the night before, there was a shooting at  
12          Luna, she starts telling them who she was with.  
13          Dalinda tells them that she was in that foyer area  
14          but did not see who did the shooting but starts to  
15          tell them who she was with, gives Alyson's name.

16               And you will learn that the officers then start  
17          following up on leads and trying to identify the  
18          people in the boards and try to find them and speak  
19          with them. You'll learn through the evidence and  
20          testimony that for almost everyone, when officers  
21          contacted them, they don't want to get involved, they  
22          don't want to be part of the case. You'll hear some  
23          of them say I don't want to be the snitch, I don't  
24          want to be the one that talks about this. And you'll  
25          learn in all intents and purposes many of the people

1           who had the information about what happened were  
2           friends or family of Chong Lee.

3           Police begin these interviews, and you will  
4           learn that in many of the interviews at the start  
5           they would ask the person have you -- were you at  
6           Luna, we want to talk to you about Luna. And you  
7           will learn through the evidence and testimony of  
8           these people denied, no, I wasn't there. Officers  
9           would then say, you will learn, we have photographs  
10          of you there, we have video of you there, and you  
11          will learn some of the people then might start to  
12          say, well I was there, but, and maybe they say more,  
13          maybe they didn't, and some people, even when they  
14          said we have photos of you, they said, well I -- I  
15          wasn't there. They still deny it. But you will  
16          learn through the series of interviews the officers  
17          are able to identify more people and who was directly  
18          around that area of Josh at the time the shot came  
19          out.

20          Some of the officers you will learn on one night  
21          traveled down to Milwaukee to talk to Alyson to get  
22          information from her. Alyson lives in Milwaukee then  
23          and still lives there now you will learn.

24          You will learn at the same time other officers  
25          tracking down Paul Lee. You will learn and see that

1 in one of the images as Paul's running out it appears  
2 that there is something in his hand from this night  
3 camera and reflective colors, and so officers want to  
4 track him down and they talk to him on December 11th,  
5 you will learn. He was asked, who did the shooting,  
6 was he involved in the shooting, and he says he  
7 wasn't in the shooting, he didn't do the shooting.  
8 You will learn officers confront him, there is this  
9 object in your hand, we know it was this group of  
10 people only that could be in that area at the time.  
11 You will know and hear Paul says it wasn't Joe, it  
12 wasn't Phong. You will ultimately learn that when  
13 officers spoke to him, and Sergeant Chue Thao was  
14 involved in the interview, Chue asks him at one time,  
15 was Chong there, he brings up his name, and  
16 ultimately that leads to, did Chong do this, was  
17 Chong involved. And you will hear testimony that  
18 Paul was very emotional at this point. Paul makes a  
19 comment to the officer, my brother is going to hate  
20 me for this, and then tells the officers that Chong  
21 was involved, he did the shooting, and tells the  
22 officers what he knew and what he had heard and what  
23 he had seen.

24 He also learned one of the things -- the officer  
25 still followed up on what was in his hand, and you'll

1 learn Paul's comments and you'll see photographs of  
2 him holding an e-cigarette, and you can draw your own  
3 conclusions and inferences from what it looks like in  
4 his hand compared to what that video image at Luna  
5 shows, but the evidence and testimony, and I think  
6 from Paul that's his statement, will be that they're  
7 very consistent. You'll learn that even after Paul  
8 shared this information, officers then went and  
9 talked to other people.

10 They didn't yet know about this trip to  
11 Milwaukee, so they hadn't talked to those people.  
12 They didn't yet know about Stephanie and Melanie  
13 eating dinner and Chong making statements to them,  
14 but over the next several days they talked to Joe  
15 Thor again, they get from Joe that trip to Milwaukee  
16 and Chong telling him on that trip to Milwaukee that  
17 he was involved, that he had done this.

18 You'll learn that on December 12th of 2013,  
19 Chong Lee was in jail, and after that point starts to  
20 make a series of jail phone calls, and that's where  
21 you will hear the testimony about the intimidation of  
22 the witness or the solicitation of perjury. You'll  
23 hear that same day, on December 12th, 2013, he makes  
24 a comment, the defendant, if mom didn't tell me to  
25 stay, I would have disappeared already, you know.

1           You'll hear continuing in December in discussions  
2           about Paul or Joe the defendant makes a comment, tell  
3           them to disappear. Continuing into January, comments  
4           from Chong, if Joe and Paul come, then I am dead.  
5           Hey, you mean, you, Phong, don't have it, they did  
6           not give Phong an inaudible to come. Chong's  
7           response, oh, because I received my papers and they  
8           said the witness is Phong. Chong: Phong, Paul and  
9           Joe, if the three of them do not come, then I get  
10          out. Continues to make comments. When you are with  
11          Joe, tell Joe he needs to say something different  
12          because the only way I could win is if they -- if  
13          they say something different you know. Inaudible.  
14          When you arrive you tell them that you -- you were  
15          scared and not sure what to say and say you were  
16          inaudible and that you just said whatever because  
17          inaudible said that is the only way I could win. And  
18          you will learn that call was with Paul. Chong: Can  
19          you tell Paul that Paul -- so that Paul -- if they  
20          bring Paul, that he is someone who is nervous  
21          inaudible, that he is nervous and scared and that's  
22          why he said that you know. Yes. But even if they  
23          said they lie it won't work you know.  
24                 You will learn as part of this case officers  
25          collected letters written by the defendant that I

1 believe evidence and testimony will show he never  
2 expected anybody to find.

3           You will learn one of the first calls that he  
4 makes when he's in jail is to his family saying take  
5 down my Facebook account, deactivate it, gives them a  
6 password so they can deactivate it and take it down.  
7 There is comments that he needs to talk to Paul and  
8 Joe. A letter to his brother Nhia. He writes: Joe  
9 and Paul supposed to recant. If they recant at the  
10 prelims, then the case is going to be dropped. He  
11 writes a letter to Michael Thor. I don't look for  
12 trouble, but when trouble comes I end it. I will end  
13 it. That's why I didn't really want to hang out with  
14 trouble seeking people because I know myself. No  
15 hesitation. I do everything the smart way. I made  
16 sure I have a way out. I just never thought family  
17 would do this to me. A letter he writes to Teng Lee  
18 who is a brother: Phong, Paul and Joe are -- be  
19 subpoena for it. It's scheduled for 10:30 February  
20 25th -- 10:30 a.m. February 25th. The only people  
21 that will be allowed to come is the witnesses which  
22 is Paul, Joe and Phong along with the cops. For  
23 evidence they only have the testimony of Paul and  
24 Joe. No physical evidence. So that means no prints,  
25 guns, et cetera. I can't have Paul and Joe show up.

1           If they do, then I would lose.

2           The autopsy of Joshua Richards will tell you  
3           that a single gunshot wound to the head is what  
4           caused his death. Dr. Kelley will tell you his death  
5           was pretty much instantaneous; and you will hear from  
6           officers who came to respond within two minutes and  
7           who literally saw Josh die there at Luna, his breath  
8           became labored.

9           You will hear evidence and testimony over the  
10          next several days about how the intentional actions  
11          of -- and choices of this defendant tie him to each  
12          of the crimes the State has charged in this matter.  
13          I'm going to ask that you pay attention to the  
14          witnesses and the facts of the case, listen to  
15          statements that come from different sources, that  
16          don't know each other, examine his actions through  
17          the evidence and testimony, and at the conclusion of  
18          the case I will ask you to return a guilty verdict on  
19          each of these charges. Thank you very much.

20                 THE COURT: Thank you, Attorney Schneider.

21                 And is the defense prepared with their opening  
22          at this time?

23                 ATTORNEY WEITZ: We are, Your Honor.

24                 THE COURT: Very good.

25                 ATTORNEY WEITZ: Good morning. It was a

1           Saturday night in a crowded bar and everyone was  
2           having a good time. A shot rang out and tragically  
3           Joshua Richards lost his life.

4           This wasn't supposed to happen, not here, not in  
5           Appleton. The police were under a lot of pressure  
6           that night to solve this crime and to do so quickly;  
7           unfortunately, though, they got it wrong. Chong Lee  
8           was not the shooter. Chong Lee did not kill Joshua  
9           Richards.

10          You'll hear in this case that the police  
11          investigation really has two parts to it. There is  
12          the initial investigation where they act very quickly  
13          to secure evidence, to talk to eyewitnesses, and  
14          based upon all that they develop Paul Lee as an  
15          initial suspect in this case. Then you'll hear about  
16          a shift in their focus, and from that point forward  
17          Chong becomes the suspect and they work on building  
18          the case against Chong.

19          In the initial investigation there is a few key  
20          pieces of evidence that suggest that Paul Lee is the  
21          suspect in this matter. Paul Lee is wearing white,  
22          he travels to the right when he exits Luna, and he's  
23          seen on traffic cameras running down the road. Very  
24          early on in the case, the police talked to a few  
25          eyewitnesses who were standing very close to the



1 shooting when it happened. Daniel Kersten is one of  
2 those. He's the bouncer who is tasked with kind of  
3 surveying the crowd and making sure that if there is  
4 any trouble he's paying attention to it, can go get  
5 over there, break it up. He tells the police when  
6 they first arrive that the suspect is wearing a white  
7 hat and a white vest. He says that that suspect is  
8 taking his hat and vest off as he's getting out the  
9 door, and he goes out the door westbound on College  
10 which is to the right of the front doors of Luna.

11 Another person the police talked to early on is  
12 Mike Verheyden. He is the friend or acquaintance of  
13 Mr. Richards. He's walking to the front when he sees  
14 this confrontation between Mr. Richards and an Asian  
15 male so he kinds of stops and is paying attention to  
16 this to see if there's going to be some sort of fist  
17 fight. He feels like it's deescalating, the parties  
18 kind of stepping apart, the situation is over, so  
19 that's when he turns his attention. He hears a pop  
20 and he looks back and sees Mr. Richards fall to the  
21 ground. He tells police that the person that they  
22 need to look for, the suspect, is wearing a plaid  
23 shirt and has a beanie hat on.

24 Adam Richardson is also a person who is standing  
25 very close to the shooting when it happens. He's

1           just to the left of the front doors waiting for a  
2           ride when the shooting happens. He tells police that  
3           the suspect he saw was wearing a white beanie hat,  
4           but most importantly what stands out to Adam  
5           Richardson is the fact that this guy as he's running  
6           down the street is running with his hands in his  
7           pockets like he's trying to conceal something.

8           So these are the -- the initial descriptions  
9           that the police have to go off of. So based upon  
10          that they realize that another key piece of evidence  
11          that they need to analyze is the surveillance video  
12          from Luna itself. The shooting itself isn't on  
13          video, but there is surveillance video showing those  
14          front doors. The police look at this videotape and  
15          analyze it very carefully. They even go so far as to  
16          go frame by frame and watch every step of the action  
17          as people run out the door. In reviewing this video,  
18          you can see that there is an initial group of three  
19          guys that, as soon as the pop happens, as soon as the  
20          shot happens, they're immediately pushing people out  
21          of the way, they throw open the doors and they're  
22          running out the door. All three of those people go  
23          to the right or westbound on College Avenue. The  
24          first person out the door is identified as Joe Thor,  
25          the second person is Paul Lee, and the third person

1 is Phong, P-H-O-N-G, not to be confused with the  
2 defendant Mr. Chong Lee. When the police slow down  
3 this video and look at it frame by frame, the second  
4 person out the door, Paul Lee, they're convinced that  
5 that object in his hand that the State described to  
6 you is a gun. They believe that that's a gun in his  
7 hand. You can only see it in one frame because  
8 immediately after that his hands go into his pocket  
9 as he exits the bar, goes to the right and around the  
10 corner and down the street.

11 There is a second group of people that leave the  
12 bar. That group leaves much slower. They're there  
13 for a couple of seconds behind these first three guys  
14 who are out the door like that. And that group of  
15 people, you will see the defendant, Mr. Chong Lee.  
16 Unlike Paul, though, his hands are visible as he  
17 exits Luna. He's leaving slower. He's not running  
18 out or pushing people out of the way. He's kind of  
19 walking quickly out the door. Unlike the first  
20 group, he also -- or he goes to the left, eastbound  
21 on College Avenue. That's a description that doesn't  
22 match what -- what the eyewitnesses told initially.  
23 Daniel Kersten says that the suspect goes westbound  
24 to the right.

25 Police seize the traffic cameras, which in

1           Appleton there is cameras on various intersections  
2           that show traffic accidents or situations like this,  
3           so they pay very close attention to these cameras as  
4           well. And down the block on the corner of Division  
5           and Washington there is a traffic camera that shows  
6           the side of Luna as you go northbound on Division.  
7           They see on these traffic cameras that first group of  
8           three suspects running down the street. Again, the  
9           first one is Joe Thor, he's running very fast. These  
10          cameras, unlike the ones in the Luna Lounge, show  
11          relatively true color. They're -- they don't have  
12          the same problems with not depicting things in the  
13          appropriate color because they show the lighting and  
14          they show what's going on on the street. So you can  
15          tell that Joe's wearing a medium colored jacket.  
16          He's also wearing a baseball cap. The second person  
17          again is Paul, and the whole way down the street he  
18          is running with his hands in his pockets. He's  
19          wearing a white jacket. Phong Lee, P-H-O-N-G, is the  
20          third person that -- in that group, and he is wearing  
21          a white puffy vest as he runs northbound on Division.  
22          He's also wearing a plaid shirt. Police track the  
23          route that these three guys run and see them go north  
24          on Division, they cut across the parking lot behind  
25          the parking ramp, and they head over towards the

1 Post-Crescent building. So based upon that officers  
2 look at some additional security footage and they see  
3 some movement by a dumpster in that area. They feel  
4 like this is very important so they want to go check  
5 that dumpster and see if there is any potential  
6 evidence that was discarded in that dumpster. They  
7 find a hat and a white vest that were thrown away,  
8 you'll learn, from Joe Thor and Phong Lee.

9 Based upon that the police go and they initially  
10 interview Joe and Phong in this matter, and in both  
11 interviews the police made it abundantly clear that  
12 they believe that Paul Lee, the guy with what looks  
13 like a gun in his hand and running with his hands in  
14 his pocket, is the shooter. Joe Thor tells the  
15 police that the shooter wasn't him, it wasn't Phong,  
16 but he leaves open the possibility that it could have  
17 been Paul. Phong Lee is much more uncooperative with  
18 the police. He tells the police that he doesn't want  
19 to be a snitch and he -- he basically denies any  
20 knowledge of what went on other than naming the two  
21 people that he was with as he ran out of the bar when  
22 confronted with the fact that they were on video.

23 Based upon the evidence that the police have  
24 gathered up until this point and Paul Lee that is  
25 their primary suspect, they go to his work and they

1 interview him. In that interview they repeatedly  
2 tell him that they're -- they know he's the shooter,  
3 that they have training in firearms, they know that's  
4 a gun in his hands, and that he's going away for the  
5 rest of his life. Paul doesn't admit to the crime,  
6 and after that he's arrested. At that point he knows  
7 that they're -- they're serious.

8 He's taken to the Appleton Police Department  
9 where they again interrogate him. And again, one of  
10 those same themes, they tell him repeatedly, you're  
11 the shooter, we know you're the shooter, we've got  
12 you, you're going away for the rest of your life.  
13 And then they give him two choices, either you name  
14 who the shooter was or it was you. Sergeant Thao is  
15 the one who suggests to him that it was Chong, that  
16 it was his brother. That comes from Sergeant Thao,  
17 not from Paul. He says, it's your brother, wasn't  
18 it. Looking at life in prison, Paul takes that. He  
19 says, yeah, reluctantly, it was my brother. The  
20 story that Paul Lee tells them is that the reason he  
21 knows it was Chong that did the shooting is because  
22 Chong came over to his house and admitted it on the  
23 Monday after the shooting. Later on you'll hear that  
24 Paul changes his story and says, actually, it was  
25 also Sunday morning that he came over a few hours

1 after the shooting and also admitted it to me. And  
2 both of those stories, though Paul never says that he  
3 saw Chong do it, he says the reason he knows is  
4 because Chong told him. Paul admits to being right  
5 there in the confrontation with the victim, he admits  
6 that he punched Mr. Richards, he says that he punched  
7 him, but he says he doesn't see who the shooter is  
8 because he turned his back after punching Mr.  
9 Richards. Sergeant Rabas pointed out to Paul that  
10 that doesn't make any sense. You don't punch a guy  
11 and then turn around, especially a guy who is much  
12 bigger than you. Sergeant Rabas mentions to him that  
13 the only way that you turn around after punching a  
14 guy is if you put a bullet in his head. In this  
15 trial the evidence will show that Paul doesn't tell  
16 the truth, so at this point, this is when the  
17 investigation shifts in focus and Chong becomes the  
18 suspect.

19 Sergeant Schira tells Paul after he has said  
20 that it was his brother that we've built this great  
21 case against you and now all we got to do is we got  
22 to get rid of that case and we got to show that it  
23 wasn't you, that it was your brother. He says that  
24 he needs some -- to get people's help.

25 At that point Chong is arrested, and when he's

1           arrested they recover his jacket that he was wearing  
2           the night of the shooting. It's black. It's not  
3           white.

4           After Chong is arrested, the police work on  
5           building their case against him. They go back and  
6           they reinterview Joe Thor and Phong Lee, part of that  
7           first group of three that ran out after the shooting.  
8           They tell both of them they need to help Paul, that  
9           Paul is in jail and they need to help him. They also  
10          interview other people that Chong may have talked to  
11          after the fact.

12          You'll hear in this case from James Trainum who  
13          is a police practices expert. He was a homicide  
14          detective for 17 years with the Washington D.C.  
15          Metropolitan Police Force. He'll tell you that in  
16          this case some mistakes were made. Some of the  
17          techniques that were used in this case are known for  
18          producing false statements.

19          The State told you about Chong and the fact that  
20          some people will come to court and say that he told  
21          them that he admitted to it. The other thing that  
22          you'll hear from these people, though, is that  
23          Chong's a bragger, that he's the type of person who  
24          tells tall tales. He says that he has fancy cars  
25          when he doesn't. He's a bragger. You'll also hear



1 from these witnesses that when Chong told them that  
2 he was part of this shooting that they didn't believe  
3 him. They thought he was joking.

4 As far as Stephanie and Melanie Thao, after he  
5 told them that he was the shooter, they continued to  
6 have contact with him. They went out to dinner a  
7 second night, they continued having phone contact  
8 with him, writing letters.

9 After Chong's arrested, it's no longer time to  
10 brag though. He's in jail, he's feeling frustrated,  
11 he knows that he doesn't want to have to face a trial  
12 for something that he didn't do, so he says some  
13 things in phone calls and letters. He talks about  
14 wanting people to come to court and tell the truth,  
15 to say that they lied, he talks about not wanting  
16 people to come to court at all because he's  
17 frustrated and knows he didn't do this, he doesn't  
18 want to have to face the trial.

19 The State will tell you a lot about Chong's  
20 communication in those phone calls and letters, but  
21 the other thing in this case is that the other  
22 witnesses also had an opportunity to communicate.  
23 Many of the witnesses in this case are related either  
24 by blood or by marriage or they're good friends with  
25 each other. For example, the bullets that the State

1 told you were found at Sharks club, Joe Thor is the  
2 one that tells the police this story about that Chong  
3 flushed things down the toilet at Sharks club, says  
4 it's actually the gun but the gun is never recovered.  
5 In that interview Joe Thor tells the police this, he  
6 goes into his house for an unknown period of time,  
7 it's when he comes out that he tells the police that  
8 Chong flushed the gun down the toilet at Sharks.  
9 Bullets were found at Sharks club, but they were  
10 found four nights after the shooting. You'll hear  
11 from the bar manager and the owner of Sharks that  
12 they find them not on Sunday night, not on Monday  
13 night, not on Tuesday night, but Wednesday night  
14 after the shooting. Sharks club is open daily. It's  
15 open all of those days, Sunday, Monday, Tuesday. The  
16 bar manager says that it's cleaned daily. Every  
17 night before they close they clean the bathrooms. In  
18 fact, the bar manager also will say that they had a  
19 cleaning crew that came through that Tuesday but the  
20 bullets are not seen until four nights later.

21 As I said at the outset of this case, the  
22 initial investigation contained eyewitness statements  
23 that the police verified through video footage from  
24 the security camera and the traffic cameras. At that  
25 point they believed that Paul Lee was the suspect in

1           this case. Then they shift the focus to Chong Lee  
2           based largely upon statements. Paul Lee was wearing  
3           white, he goes to the right, Chong Lee is wearing  
4           black, he goes to the left.

5           The State will present a lot of evidence in this  
6           case, but at the end of the day they got it wrong.  
7           They shifted their focus to only Chong Lee and they  
8           got it wrong. Chong Lee is an innocent man, and at  
9           the close of this case, we'll come back before you  
10          and ask you to return a verdict of not guilty. Thank  
11          you.

12                       THE COURT: Thank you, Attorney Weitz.

13           And does the State need a few moments or is the  
14          State prepared to call its first witness?

15                       ATTORNEY SCHNEIDER: We would have to get  
16          some exhibits up so we might need some time to bring  
17          those up, Judge.

18                       THE COURT: Why don't we recess -- we'll  
19          recess for about ten minutes. And, members of the  
20          jury, I didn't see if when you were walking in if you  
21          brought water, but you are more than welcome to bring  
22          water in with you, so if while on your break you want  
23          to bring some in, you're more than welcome to do so.

24                       Please rise for the jury.

25                       (The jury was escorted out of the

1 courtroom.)

2 THE COURT: You may be seated. We'll be in  
3 recess for about ten minutes.

4 (Court in recess.)

5 THE COURT: We can bring in the jury.  
6 Please rise.

7 (The jury was escorted into the courtroom.)

8 THE COURT: Please be seated.

9 Miss Schneider, at this time is the State  
10 prepared to call its first witness?

11 ATTORNEY SCHNEIDER: We are.

12 THE COURT: Very good.

13 ATTORNEY SCHNEIDER: We would call Officer  
14 Blaine Vander Wielen.

15 THE COURT: Sir, If you would please come  
16 to the witness stand and remain standing, we'll have  
17 you sworn in.

18 (Oath administered to witness.)

19 THE WITNESS: I do.

20 THE CLERK: Please state your full name and  
21 spell it for the record please.

22 THE WITNESS: Blaine Vander Wielen,  
23 B-L-A-I-N-E. Last name V, as in Victor, A-N-D-E-R  
24 space W-I-E-L-E-N.

25 THE COURT: Your witness, Miss Schneider.

1 ATTORNEY SCHNEIDER: Thank you.

2 **EXAMINATION OF BLAINE VANDER WIELEN**

3 **BY ATTORNEY SCHNEIDER:**

4 Q How are you employed?

5 A I'm a police officer for the City of Appleton.

6 Q How long have you been employed in law enforcement?

7 A I've worked for the City of Appleton since October of  
8 2009, and I also held a part-time officer position  
9 for about eleven months prior to that in the Village  
10 of Fall River, Wisconsin.

11 Q What are your current duties for the Appleton Police  
12 Department?

13 A I'm an investigator assigned to our school resource  
14 unit.

15 Q Have you held previous duties during your time with  
16 the Appleton Police Department?

17 A Yes. I was previously assigned to our patrol  
18 division.

19 Q What was your assignment back in December of 2013?

20 A I signed up to work our College Avenue detail which  
21 was a foot patrol detail in the bar district of  
22 College Avenue.

23 Q Can you explain for the jury a little bit what it  
24 means when you have that assignment?

25 A Sure. When you sign up for that particular detail,

1           you go through the bars and handle any calls for  
2           service that come up related to bars or bar  
3           activity.

4       Q     Are you doing that alone or with another officer?

5       A     Each person is typically partnered up with another,  
6           and we usually have anywhere between two to four  
7           total people involved at that.

8       Q     Does that -- were those duties weekend duties  
9           primarily or week nights?

10      A     Those were Friday and Saturday night duties.

11      Q     And did you have such an assignment back on December  
12           8th of 2013?

13      A     I did.

14      Q     What hours did you work then for that foot patrol  
15           assignment?

16      A     That particular night we were -- we started on  
17           December 7th at 11 p.m. and we typically worked  
18           through three a.m. or whenever things had dispersed  
19           to a reasonable level.

20      Q     Do you remember which officer was assigned to work  
21           that patrol with you?

22      A     It was Lieutenant Peters.

23      Q     Do you recall, Officer Vander Wielen, a dispatch that  
24           came in at about 1:50 a.m.?

25      A     I do.

1 Q And where were you at the time of the dispatch?

2 A At the time of the dispatch Lieutenant Peters and I  
3 were at Sal's Pizzeria doing a business check.

4 Q What information was provided through dispatch?

5 A The dispatch was that there was a possible gunshot at  
6 Luna Lounge.

7 Q Where did you then go?

8 A We immediately walked to Luna Lounge to  
9 investigate.

10 Q Okay. And just to help the jury, everyone might not  
11 know, Sal's Pizza, to get to Luna Lounge, what did  
12 you have to do?

13 A Sal's Pizza is across the street and partially into  
14 the 400 block, so we needed to walk down College and  
15 cross the street to get to Luna.

16 Q Did you immediately head that way?

17 A We did.

18 Q About how long do you think it took you to get  
19 there?

20 A I would say probably about a minute or two.

21 Q Okay.

22 ATTORNEY SCHNEIDER: Your Honor, may I  
23 approach?

24 THE COURT: You may.

25 Q (BY ATTORNEY SCHNEIDER) While you were en route,

1           were there any updates given?

2     A     Not that I recall.

3     Q     I'm going to show you, Officer, what's been marked as  
4           State's Exhibit No. 6. First if you want to just  
5           confirm that's the exhibit number?

6     A     It is.

7     Q     Are you familiar with what's depicted here on Exhibit  
8           6?

9     A     Yes, I am.

10                   ATTORNEY SCHNEIDER: Judge, may I publish  
11           for the jury to see?

12                   THE COURT: You may.

13     Q     (BY ATTORNEY SCHNEIDER) Officer, what is depicted  
14           here in Exhibit 6?

15     A     This is showing the 300 block of West College Avenue.  
16           The location here is Luna Lounge, or was Luna  
17           Lounge.

18     Q     And when you do that, just to assist because the  
19           reporter can't take it down, when you said "here" you  
20           were pointing to an area that is the southwest corner  
21           and it's marked with a street address; is that  
22           correct?

23     A     Correct. It's marked with 344 West College.

24     Q     So that would be Luna Lounge?

25     A     Correct.



1 Q Okay.

2 A The building on the left side of the page is the  
3 Performing Arts Center. The address labeled as 318  
4 West College Avenue is the Sharks club.

5 Q Okay. Is Sal's Pizza on this Exhibit 6?

6 A It is not labeled, but it would be roughly in this  
7 bottom left corner somewhere in this region.

8 Q Okay. And so you and Lieutenant Peters heard the  
9 dispatch and then walked to Luna Lounge?

10 A Correct.

11 Q And as part of those foot patrol duties, did you have  
12 responsibilities to go into Luna Lounge either on  
13 this night or on other occasions?

14 A Yes, we did.

15 Q Were you familiar with somewhat of the layout of Luna  
16 Lounge?

17 A Yes, I am.

18 Q Okay. Just generally describe it for the jury.

19 A When you walk in through the main doors, there was  
20 kind of an entrance area that opened up that had a  
21 few different kind of corners and angles built into  
22 the wall, and then eventually as you got into the  
23 entrance further, there was a stairway that led to a  
24 lower level where the restrooms were located, and  
25 then there was a threshold that then opened up into

1 the main bar portion.

2 Q Okay. Officer, I'm going to show you, and can you  
3 confirm the yellow sticker is Exhibit 1?

4 A Yes, it is.

5 Q Are you familiar with what is depicted here?

6 A Yes. That is the layout of Luna Lounge.

7 ATTORNEY SCHNEIDER: Your Honor, may I  
8 publish to the jury?

9 THE COURT: Any objection?

10 ATTORNEY VISHNY: No.

11 THE COURT: You may.

12 ATTORNEY WEITZ: Can we approach?

13 THE COURT: You may. If you can take it  
14 down, Miss Schneider, just while counsel approaches.

15 (A bench conference was held.)

16 Q (BY ATTORNEY SCHNEIDER) Let me get Exhibit 1 flipped  
17 around for you, Officer.

18 A Um-hum.

19 Q And actually, if you don't mind, I'm going to go back  
20 to you talked about Exhibit 6 which is depicted  
21 here?

22 A Yup.

23 Q Can you write Luna in the area where Luna Lounge is  
24 or above maybe the street address?

25 A (Witness complying.)

1 Q And then can you do the same for Sharks?

2 A (Witness complying.)

3 Q And I think the other building you identified on here  
4 is the Performing Arts Center, if you could just  
5 initial it with PAC?

6 A (Witness complying.)

7 Q Thank you. And, Officer, you don't have a pointer,  
8 do you? Exhibit 1 is Luna Lounge again?

9 A Yup.

10 Q And the main entrance doors are labeled; is that  
11 correct?

12 A That is correct.

13 Q Are those the entrance doors you would have used when  
14 you entered with Lieutenant Peters?

15 A That is correct.

16 Q Is all of Luna Lounge displayed here or just a  
17 portion of it?

18 A Just a portion.

19 Q Okay. And there is an area marked bar, correct?

20 A Correct.

21 Q Is there a second bar area to Luna Lounge as well?

22 A There is. What would be further up on the page not  
23 being depicted is a lower bar.

24 Q At one point Luna Lounge was the Viking Theatre,  
25 correct?

1 A That I --

2 Q You don't know that? Okay.

3 When you arrived at Luna Lounge, did you  
4 immediately enter?

5 A We did.

6 Q What do you remember when you entered?

7 A I remember that it was -- it was very loud. It was  
8 very dark. There was a lot of commotion going on  
9 within the entrance area, and it seemed that the  
10 majority of the lighting was done by the different  
11 entertainment lights that Luna had at the time.

12 Q Do you remember sometimes lights are referred to as  
13 like black lights where white is reflective,  
14 sometimes either lighter colors are reflective, is  
15 that the type of lighting they had?

16 A They did have some black lighting. They also had  
17 other design lighting that was moving around kind of  
18 displaying different circular or different types of  
19 patterns on the walls and floor.

20 Q And after you entered, where did you go?

21 A We immediately entered in and walked toward the  
22 threshold and stairs area of the, I guess, entrance  
23 area.

24 Q Okay. So you pointed to an area from what's the main  
25 entrance to kind of you called it the threshold in

1 front of the area marked stairs; is that correct?

2 A That's correct.

3 Q What did you find there?

4 A We found that there was a male individual laying on  
5 the ground. He appeared to have blood to the left  
6 side of his head.

7 Q When you went into this area, was it still very  
8 dark?

9 A It was very dark.

10 Q Did you assess for any areas of injury?

11 A We did. Lieutenant Peters handled most of the first  
12 aid and assessment piece, but we did check and found  
13 that there appeared to be an injury on the left side  
14 of his face.

15 Q Do you remember -- did you try to communicate with  
16 him?

17 A I don't remember myself specifically trying to  
18 communicate with him, but I believe others did.

19 Q Do you remember how his body was positioned in  
20 relation to anything that it was a part of Luna?

21 A Yes. His head was facing toward the south. If I may  
22 stand?

23 THE COURT: You may, sir.

24 A Kind of in this region here. The edge of this  
25 particular wall was kind of near his upper chest area

1           and his feet were pointed toward the main bar and  
2           threshold area.

3       Q     Okay. Did you get any initial information from  
4           staff?

5       A     I did have a security guard tell me that there were  
6           two Asian individuals that had left the scene. He  
7           didn't know if they were involved or not, but they  
8           were wearing white vest and white hat.

9       Q     Were there still a large number of patrons in the bar  
10          when you arrived?

11      A     There were.

12      Q     Was it pretty packed?

13      A     I would say so.

14      Q     At that point after you and Officer Vander Wielen  
15          (sic) entered, were other officers also responding?

16      A     Yes. I had made a radio broadcast to have officers  
17          respond, emergency, to assist us due to the size of  
18          the scene and what was all taking place.

19      Q     Did you at that point set up -- either you or the  
20          lieutenant set up some restrictions so that parties  
21          weren't allowed to leave?

22      A     Yes. I -- I also made the request that we have  
23          officers posted at every exterior door of the  
24          business to try to ensure that no one came into the  
25          scene or left the scene.

1                   ATTORNEY SCHNEIDER: Your Honor, may I  
2           approach?

3                   THE COURT: You may.

4     Q     (BY ATTORNEY SCHNEIDER) I'm going to show you what's  
5           been previously marked as State's Exhibit No. 2. Are  
6           you familiar with that exhibit, Officer Vander  
7           Wielen?

8     A     Yes, I am.

9     Q     And Exhibit 1 and 2 are very similar, correct?

10    A     They are very similar.

11    Q     What's the difference?

12    A     The presence of the red X.

13    Q     And that would be as you testified in the approximate  
14           area of what?

15    A     That would be the approximate area of where the  
16           victim was laying.

17    Q     Okay. He was identified in some fashion?

18    A     Yes, he was eventually identified.

19                   ATTORNEY SCHNEIDER: Your Honor, I don't  
20           know that I have, but I would move 1, 2 and 6 into  
21           evidence at this time.

22                   THE COURT: Any objection, counsel?

23                   ATTORNEY WEITZ: No, Your Honor.

24                   THE COURT: Exhibits 1, 2 and 6 shall be  
25           received.

1 ATTORNEY SCHNEIDER: Can you help me?

2 THE WITNESS: Absolutely.

3 Q (BY ATTORNEY SCHNEIDER) I'm going to actually ask  
4 you to stay standing, Officer Vander Wielen. I'm  
5 going to show you a board and just confirm the  
6 exhibit numbers range from 7, 8, 9, 10, 11, 12, 13  
7 and 14?

8 A That is correct.

9 Q Okay. So we're going to start top left as we look at  
10 it is Exhibit 7, correct?

11 A Yes.

12 Q What area is depicted there?

13 A That picture is showing the main entrance for Luna  
14 Lounge. It would be facing to the north.

15 Q Okay. And then continuing upper right, Exhibit No.  
16 8?

17 A That is the main entrance that we entered.

18 Q And then continuing on, Exhibit 9, which would be the  
19 second one in the row on the left column?

20 A That appears to be just within the main course.

21 Q And pretty fair and accurate as to what you recall  
22 about when you were there on December 8th of 2013?

23 A Correct.

24 Q Moving then to Exhibit 10.

25 A That would be now panning to the east toward the



1 threshold of the main bar.

2 Q Continuing then Exhibit 11.

3 A This would be showing a back corner to what would be  
4 here.

5 Q And you said Exhibit 10; is that correct?

6 A In Exhibit 10, yes.

7 Q And Exhibit 12 then?

8 A Exhibit 12 is just another pan toward the main  
9 threshold to the -- I'm sorry, the threshold to the  
10 main bar.

11 Q And the doorway to get into the bar, it's an arched  
12 doorway, correct?

13 A Yes.

14 Q So it's actually -- I shouldn't call it a doorway,  
15 there is no door?

16 A Yes.

17 Q It's just an opening?

18 A Correct.

19 Q And if you're in the bar, what can you use to see  
20 into that foyer area? Is there any area other than  
21 that open arched --

22 A From the main bar?

23 Q Correct.

24 A No. That is the only area.

25 Q And then continuing at the bottom, Exhibit 13?

1 A Exhibit 13 is I guess what would be more to the right  
2 over here, just kind of showing --

3 Q And then Exhibit 14?

4 ATTORNEY VISHNY: I'm sorry. I couldn't  
5 hear, his voice dropped.

6 A I'm sorry. This is just a further depiction of what  
7 would be tilted to the right or more eastern  
8 facing.

9 Q And then 14?

10 A And 14 is just a little bit further into the corner  
11 there.

12 Q So there is some restrooms marked here in 13 and 14.  
13 Those are not public use restrooms?

14 A Correct. Those were for the employees only.

15 Q Okay.

16 ATTORNEY SCHNEIDER: And then I would move  
17 7 through 14 in at this time.

18 THE COURT: Any objection?

19 ATTORNEY WEITZ: No.

20 THE COURT: 7 through 14 shall be  
21 received.

22 Q (BY ATTORNEY SCHNEIDER) I'm going to show you  
23 exhibits marked 15 through 19. Is that the correct  
24 numbers?

25 A Those are correct.

1 Q Okay. Starting at the top, Exhibit 15, what's  
2 depicted there?

3 A Those would be the main doors leading out to College  
4 Avenue.

5 Q And Exhibit 16?

6 A Just another depiction of that main entrance area.

7 Q And would that be the view as if you were standing  
8 near the front doorway looking to that landing area  
9 as you called it?

10 A That is correct.

11 Q And Exhibit 17, what's depicted there?

12 A That would be the main -- or the threshold into the  
13 main bar, just a little bit further in from Exhibit  
14 16.

15 Q And Exhibit 18?

16 A Just, again, a little bit further in with the main  
17 threshold to the main bar.

18 Q And then, finally, Exhibit 19?

19 A This would be the half wall stairway and threshold of  
20 the main bar.

21 Q And using Exhibit 19, you said when you found Mr.  
22 Richards -- the victim, did you ultimately learn his  
23 name?

24 A Yes. Joshua Richards.

25 Q So when you found Mr. Richards you kind of identified

1           this half wall shown in Exhibit 19 as was related to  
2           his body? What was that again?

3     A     His body was positioned with his head just past the  
4           half wall here, his body was perpendicular, I'm  
5           sorry, parallel to the half wall with his feet down  
6           in this general region.

7     Q     Okay.

8                     ATTORNEY SCHNEIDER: And then I move 15  
9           through 19.

10                    THE COURT: Any objection?

11                    ATTORNEY WEITZ: No, Your Honor.

12                    THE COURT: 15 through 19 shall be  
13           received.

14     Q     (BY ATTORNEY SCHNEIDER) Finally, Officer, Exhibits  
15           20 through 24. Are you familiar with what is  
16           depicted in each of those?

17     A     Correct.

18     Q     And starting with Exhibit 20, what's shown there?

19     A     That again is the threshold to the main bar and the  
20           area where the victim was laying.

21     Q     Ultimately did medical providers come to provide  
22           assistance for Josh?

23     A     Yes. Gold Cross and the fire department responded.

24     Q     Exhibit 21, what's depicted there?

25     A     That would be a very similar picture to the last one

1 of the threshold and half wall.

2 Q From your past experience when medical people come  
3 and provide assistance, when they leave do they  
4 always pick up everything that they brought or used  
5 when they were on scene?

6 A Not all the time.

7 Q Okay. Exhibit 22, what's shown there?

8 A That would be the half wall and stairs to the lower  
9 level.

10 Q Exhibit 23?

11 A This would be the area where the victim was laying  
12 with the blood that we had observed when we initially  
13 arrived.

14 Q And then, finally, Exhibit 24?

15 A This would be a picture taken kind of from this area  
16 back toward the main doors.

17 Q And you were saying Exhibit 22, the area kind of the  
18 top of the landing looking to the front doors?

19 A Generally in that area.

20 ATTORNEY SCHNEIDER: Okay. I would move 20  
21 through 24.

22 THE COURT: Any objection, counsel?

23 ATTORNEY WEITZ: No, Your Honor. Thank  
24 you.

25 THE COURT: 20 through 24 shall be

1 received.

2 ATTORNEY SCHNEIDER: You can grab a seat.

3 Q (BY ATTORNEY SCHNEIDER) When you arrived, had  
4 employees or security personnel tried to limit or  
5 restrict that front area so no one but Josh was  
6 there?

7 A It is my understanding that they tried.

8 Q But were there other citizens in that area coming in  
9 and out?

10 A There were.

11 Q Okay. As part of your work, did you review any  
12 traffic camera footage?

13 A Yes, I did.

14 Q Specifically did you review any footage or  
15 intersections that would be associated with Luna?

16 A I did. I reviewed two different intersections on  
17 Division Street that were just north of Luna.

18 Q Okay. Can you remember, when you reviewed North  
19 Division, did you review it where it intersected with  
20 Washington?

21 A That was one of the intersections.

22 Q And do you recall anything that you observed on that  
23 traffic camera?

24 A For the traffic camera at Division and Washington, I  
25 -- I did observe that there were three individuals

1 running northbound on Division from what appeared to  
2 be College and Division, that corner.

3 Q Okay. I'm going to approach just one more time and  
4 we're going to utilize Exhibit 6.

5 The traffic camera you reviewed, is that general  
6 area where that is located depicted here on Exhibit  
7 6?

8 A It is.

9 Q Okay. I'm going to give you a purple marker. If you  
10 just want to put TC for traffic camera in the area  
11 where that traffic camera is located?

12 A I believe the traffic camera was positioned on that  
13 northwest corner of the intersection.

14 Q Okay. And is there any unique features about this  
15 traffic camera, meaning is it a stationary one-view  
16 camera or does it have some other capabilities?

17 A That intersection had two different types of cameras  
18 attached to it. It had what is labeled as a  
19 detection camera and it also had a pan-tilt-zoom  
20 camera for it.

21 Q So what's the difference?

22 A The detection cameras were stationary and depicted  
23 each offshooting area of that intersection, and the  
24 pan-tilt-zoom was one that was able to move, zoom in  
25 and be manipulated.

1 Q Okay.

2 ATTORNEY SCHNEIDER: I don't have any other  
3 questions then at this time.

4 THE COURT: Very good. And, defense, any  
5 questions?

6 ATTORNEY WEITZ: Yes, Your Honor.

7 **EXAMINATION OF BLAINE VANDER WIELEN**

8 **BY ATTORNEY WEITZ:**

9 Q All right. Officer Vander Wielen, you and Lieutenant  
10 Peters were basically across the street at the time  
11 that you got the call for the shooting, right?

12 A Yes, sir.

13 Q So you were very -- on the scene very quickly, got  
14 across the street and were there within a matter of  
15 minutes.

16 A Correct.

17 Q Okay. I'm going to show you what's been marked as  
18 Exhibit 31.

19 THE COURT: And is it -- let me just ask,  
20 members of the jury, do you need me to turn the  
21 lights down, and the same question I'll ask of you,  
22 Officer, is everyone able to see it all right?

23 THE WITNESS: I'm fine with it.

24 ATTORNEY WEITZ: And for the record, I'm  
25 starting this video at 13:52:48.



1 Q (BY ATTORNEY WEITZ) Officer Vander Wielen, this is  
2 the front door area that you were describing of Luna,  
3 correct?

4 A Yes, it is.

5 Q Okay. Do you recognize the person coming in the  
6 doors? Is that you?

7 A That would be Lieutenant Peters.

8 Q That's Lieutenant Peters? Okay.

9 ATTORNEY WEITZ: I'm just going to play a  
10 little bit of this video. I'm going to 13:52:48.

11 Q (BY ATTORNEY WEITZ) Now Lieutenant Peters, he was  
12 wearing a uniform that night when you were working  
13 the traffic detail or the College Ave. detail?

14 A Yes, we were in uniform with our uniform jackets  
15 on.

16 Q And that's your standard blue uniform, dark navy?

17 A Yes, sir.

18 Q So this video right here, he wasn't wearing a white  
19 uniform that night?

20 A Correct. He was in dark blues.

21 Q Okay. So the camera does not depict the actual  
22 color --

23 A Correct.

24 Q -- of his attire.

25 And when you got to Luna, you were able to see

1 Mr. Richards laying on the floor?

2 A Yes, sir.

3 Q But you didn't know whether or not he had been moved  
4 at all before you arrived on the scene?

5 A Correct.

6 Q And you said that the initial info that you received  
7 was that the suspects were two Asian males wearing  
8 white hats and white vests, right?

9 A I believe that's what I said, yes.

10 Q Running north on Division?

11 A The information -- I don't recall if I was told that  
12 they were north on Division, but we were told that  
13 they had left out the doors.

14 Q To the right, westbound on College Ave.?

15 A Yes, sir.

16 Q And that came from Daniel Kersten?

17 A I never identified who provided that information. I  
18 know it was a security --

19 Q The bouncer standing at the front door?

20 A It was one of their security personnel.

21 Q Okay. After your initial duties on the scene, one of  
22 the things that you did after that was you went back  
23 and reviewed the traffic cameras, right --

24 A Correct.

25 Q -- as you described.

1 A Yes.

2 Q And the specific one that was referenced was the  
3 Division and Washington Street camera, right?

4 A Yup.

5 Q Okay. And in that footage you saw that there was  
6 three individuals running north on Division Street?

7 A Yes.

8 Q Okay. And there was two cameras, right, there was  
9 the pan-tilt-zoom and then also what you described as  
10 a detection type camera?

11 A Yes.

12 Q Okay. All right. Officer Vander Wielen, I'm going  
13 to show you what's been marked as Exhibit 97. On  
14 that disk there is a file, it's Item No. 71, and I'm  
15 going to be playing a portion of that video at  
16 1:50:29 a.m. And do you recognize that video?

17 A Yes, I do.

18 Q And would that be one of those traffic cameras?

19 A Yes. That appears to be the pan-tilt-zoom.

20 Q Okay. And on that video, you observed three  
21 individuals running up the street?

22 A Yes.

23 Q Correct?

24 A Yes.

25 Q And I'm going to play a portion here. And I can

1 describe the video. So the top right corner is  
2 approximately the corner of Luna Lounge, College and  
3 Division?

4 A Yes. The -- just beyond the row of cars there is the  
5 corner.

6 Q Okay. And then as you come down and towards the  
7 left, that would be northbound along Division.

8 A That's correct.

9 Q Okay. So the individuals you saw running are going  
10 to follow that path.

11 A Correct.

12 Q Again, playing the video starting at 1:50:29. I'm  
13 going to stop it at 1:50:37.

14 That individual that you see by the parking  
15 ramp, that was one of those individuals that you saw?

16 A That's correct.

17 Q Okay. Did you identify that individual?

18 A I believe he was later identified as Joe.

19 Q Joe Thor?

20 A Thor, correct.

21 Q Okay. Now playing the video, stopping at 1:50:44,  
22 and see two individuals again near the parking ramp,  
23 correct?

24 A That is correct.

25 Q And I guess the second individual or the one who is

1 further ahead as you're traveling north, that would  
2 be Paul Lee?

3 A That is my understanding, yes.

4 Q Okay. And then the third individual, that's Phong  
5 Lee?

6 A I'm sorry?

7 Q Phong Lee, P-H-O-N-G?

8 A Yes, that's my understanding.

9 Q Playing the video again, stopping it at 1:50:54 when  
10 they begin to go out of view, that entire time you  
11 observe that Paul Lee is running down the street with  
12 his hands in his pockets, right?

13 A That is correct.

14 Q Okay. And you also notice that the third individual  
15 was wearing a white vest.

16 A A white or light colored vest.

17 Q And that would be consistent with that initial  
18 description that you were given?

19 A That is correct.

20 Q Okay. You checked some other cameras and you saw  
21 these people, same individuals on the other cameras  
22 as well?

23 A For the traffic cameras, yes, I did.

24 Q So you were able to determine a route that they  
25 traveled?

1 A Yes.

2 Q Okay. And one of the areas that you saw them on was  
3 the area near the Post-Crescent parking lot, near the  
4 Post-Crescent building?

5 A That is correct.

6 Q Okay. And based upon that you made the decision to  
7 check and see if there was any additional  
8 surveillance video of that area?

9 A Yes. What I did was from the pan-tilt-zoom I  
10 utilized the detection camera for that intersection,  
11 and they ran in a kind of northeastern direction from  
12 there, through the Post-Crescent parking lot, and  
13 then I checked Division and Franklin's cameras.

14 Q Did you also view the video from the actual parking  
15 ramp?

16 A From the parking ramp itself? I don't believe I --  
17 I've looked at.

18 Q Okay. All right. So on those other videos that you  
19 described, you observed some movement near a dumpster  
20 area in that area?

21 A Yeah. When -- when I checked the cameras for  
22 Division and Franklin Street, which is just one block  
23 further north from that video --

24 Q If I show you the map, Exhibit 6, would that help you  
25 describe?

1 A Yes, that would help.

2 Q All right. Show you what's been marked as Exhibit 6.

3 A So they -- if I may stand. They took a path  
4 generally in this direction, and Franklin Street is  
5 the next one up.

6 Q So that would be northeast was the direction you were  
7 describing?

8 A Correct. Northeast, and they ultimately crossed  
9 Franklin Street continuing north to northeast and  
10 went to a dumpster area which is behind our -- what  
11 is now called the Homeless Connections.

12 Q Okay. And based upon that movement that you saw in  
13 that dumpster area, you made the decision then to go  
14 see if any evidence had been discarded or if you  
15 could find anything, correct?

16 A That is correct.

17 Q And when you looked in that area, you found a  
18 baseball hat between those dumpsters.

19 A Yeah. Between one set of the dumpsters that were in  
20 that area.

21 Q Okay. And then, after that, you didn't collect it  
22 yourself but you asked other officers to come out and  
23 kind of look for additional evidence in that area?

24 A Correct. And to photograph everything.

25 Q And one additional piece of evidence that you found

1           actually in the dumpster was a white vest.

2     A     Correct. In a different set than where the hat was  
3           located.

4     Q     Okay. And that would be consistent with the vest  
5           that you saw Phong Lee wearing in that video that I  
6           just played for you earlier?

7     A     Correct.

8     Q     I think one of your other responsibilities in this  
9           case a little bit later was that you were tasked with  
10          collecting evidence at Chong Lee's residence when he  
11          was arrested?

12    A     That is correct.

13    Q     Okay. And one of those -- the items that you  
14          collected was a black and gray jacket?

15    A     I collected multiple items. I have to review my  
16          report to know specifics.

17    Q     Okay. If I show you --

18    A     If I may.

19    Q     If I showed you your report, would that refresh your  
20          recollection?

21    A     Yes, that would help. Thank you. This one.

22    Q     Does that help you remember?

23    A     Yup.

24    Q     So did you collect a black and gray jacket?

25    A     I did.



1 Q Okay. And there was also two baseball caps that you  
2 recovered?

3 A If I may?

4 Q Would you need to see your report?

5 A I collected a gray with black Brewers logo baseball  
6 cap as well as a dark brown baseball cap with a Sox  
7 logo in black.

8 Q Thank you.

9 ATTORNEY WEITZ: No further questions.

10 Thank you, Your Honor.

11 THE COURT: Any redirect, Attorney  
12 Schneider?

13 **EXAMINATION OF BLAINE VANDER WIELEN**

14 **BY ATTORNEY SCHNEIDER:**

15 Q I didn't establish, and I don't know if the jury  
16 would understand, Officer Vander Wielen, but the City  
17 of Appleton is actually multiple counties, correct?

18 A Correct.

19 Q So what counties are all encompassed by the City of  
20 Appleton?

21 A We have Outagamie County, Winnebago County and  
22 Calumet County.

23 Q And the portion of Appleton that this offense  
24 occurred in, which county is that?

25 A Outagamie County.

1 Q You did not do any comparison of that black and gray  
2 jacket found at Chong's home with the video, did  
3 you?

4 A No.

5 Q Okay. And you're aware from watching the video  
6 somewhat that different fabric reflects in different  
7 ways, correct?

8 A Correct.

9 ATTORNEY SCHNEIDER: Nothing further.

10 THE COURT: Any follow-up, Attorney Weitz?

11 ATTORNEY WEITZ: No, Your Honor. Thank  
12 you.

13 THE COURT: Officer, you are excused.

14 ATTORNEY SCHNEIDER: Could we approach  
15 please?

16 THE COURT: You may.

17 (A bench conference was held.)

18 THE COURT: Ladies and gentlemen, at this  
19 time, lest we have another witness, it may create for  
20 an unusual lunchtime, so this is as close to twelve,  
21 so this is as logical of a breaking point as we -- as  
22 we could possibly have. So what I would ask, you are  
23 relieved for lunch at this time. Again, remember my  
24 instructions.

25 And then what I would ask is that you be here

1 ready to again resume at 1:00.

2 Wendy, if you could escort our jury out. Please  
3 rise.

4 (The jury was escorted out of the  
5 courtroom.)

6 THE COURT: Anything else we need to  
7 address, Attorney Schneider?

8 ATTORNEY SCHNEIDER: No. Maybe we just put  
9 on we had a sidebar.

10 THE COURT: I was going to put that on.

11 ATTORNEY SCHNEIDER: Yeah. I want to make  
12 sure we always do those.

13 THE COURT: Attorney Vishny, aside from the  
14 sidebar, anything else?

15 ATTORNEY VISHNY: Aside from the sidebar.

16 Well, are you talking about the sidebar where we  
17 said we could just publish?

18 THE COURT: Yes.

19 ATTORNEY VISHNY: I was also going to  
20 suggest that maybe, Miss Schneider, we don't always  
21 have to ask to approach the witness.

22 ATTORNEY SCHNEIDER: That is just habit.  
23 I'm not even realizing I do it.

24 THE COURT: We'll address both those  
25 issues.

1           We did have a sidebar approximately 11:35,  
2           parties had approached, had asked whether it would be  
3           acceptable if they, unless there is an objection,  
4           that they -- that they be allowed to publish without  
5           constantly asking for permission. I certainly have  
6           no objection or no problems with that approach.

7           Likewise, it's just been brought to my  
8           attention, permission has been requested to allow  
9           parties to go back and forth to the witness, and  
10          again, provided the other side has been shown  
11          whatever exhibit or is aware of what would be  
12          presented, constant permission is not necessary.

13                    ATTORNEY VISHNY: Okay.

14                    THE COURT: I'll treat it as permission has  
15                    been asked and it's been granted on an ongoing  
16                    basis.

17                    ATTORNEY VISHNY: Thank you.

18                    THE COURT: Is that an accurate reflection  
19                    of our discussions, Attorney Schneider?

20                    ATTORNEY SCHNEIDER: Yes.

21                    THE COURT: Attorney Vishny?

22                    ATTORNEY VISHNY: Yes.

23                    ATTORNEY WEITZ: Your Honor, I just have  
24                    one question that just dawned on me as far as the  
25                    jury questions.

1 THE COURT: Yes.

2 ATTORNEY WEITZ: We just going to address  
3 that if they submit a question?

4 THE COURT: Normally I ask. I forgot.

5 ATTORNEY WEITZ: Okay.

6 THE COURT: That's why usually I do ask. I  
7 apologize. I can -- I suppose at this point we can  
8 leave it be or we can just follow up with the next  
9 witness. Any preference?

10 ATTORNEY SCHNEIDER: I think we just leave  
11 it be with Officer Vander Wielen and we can start  
12 with the next witness.

13 THE COURT: Are you okay with that,  
14 Counsel?

15 ATTORNEY VISHNY: Sure. Yeah.

16 THE COURT: I apologize. I will -- I'll  
17 take the lead on that. That was my error.

18 (A lunch recess was taken.)

19 (The jury was escorted into the courtroom.)

20 THE COURT: Be seated. Attorney Schneider,  
21 are you prepared to call your next witness?

22 ATTORNEY SCHNEIDER: We are. We would call  
23 Dan Kersten.

24 THE COURT: Sir, if you would please come  
25 to the witness stand, remain standing.

1 THE WITNESS: Yes.

2 THE COURT: We'll swear you in. Please  
3 raise your right hand.

4 (Oath administered to witness.)

5 THE WITNESS: Yes, ma'am.

6 THE CLERK: Please state your full name and  
7 spell it for the record please.

8 THE WITNESS: Daniel J. Kersten,  
9 K-E-R-S-T-E-N.

10 THE COURT: Thank you, sir. You may be  
11 seated.

12 And then, Attorney Schneider, your witness.

13 ATTORNEY SCHNEIDER: Thank you.

14 **EXAMINATION OF DANIEL J. KERSTEN**

15 **BY ATTORNEY SCHNEIDER:**

16 Q Mr. Kersten, are you familiar with an establishment  
17 here in Appleton called Luna Lounge?

18 A Yes, ma'am.

19 Q And how or why are you familiar with Luna Lounge?

20 A I was priorly (sic) employed there when it was  
21 open.

22 Q Do you remember when you started working there?

23 A Approximately December of 2012.

24 Q And did -- were you still working there in December  
25 of 2013?

1 A Yes, ma'am.

2 Q And what was your job or your position at Luna?

3 A Security, bar back, everything and anything needed  
4 from the bar area and maintaining crowd control, I  
5 guess.

6 Q Had you ever been employed in any other position  
7 where you were doing those kinds of tasks?

8 A Yes, ma'am.

9 Q Just to give the jury some framework, when did you  
10 ever first start working, like, security at a bar?

11 A That would have been about 2011 time frame working in  
12 Neenah for Green Valley Investments.

13 Q And do you -- you no longer work at Luna because it's  
14 changed, correct?

15 A Correct.

16 Q But do you still work in a capacity where you're at a  
17 bar performing security?

18 A Yes, ma'am.

19 Q When you worked at Luna, were you responsible to work  
20 most weekends?

21 A Yes, ma'am.

22 Q And on a typical Friday or Saturday night, thinking  
23 back to December of 2015, would the bar be pretty  
24 busy, pretty empty or did it vary?

25 A It would vary between Friday to Saturday. Friday

1           would be busy, Saturday night would be by far  
2           busier.

3       Q     Mr. Kersten, I'm going to direct your attention back  
4           to what would be Saturday, December 7th into the  
5           early morning hours of Sunday, December 8th, 2013.  
6           Do you remember working at Luna that shift?

7       A     Yes, ma'am, I do.

8       Q     And specifically do you remember something that  
9           happened just prior to bar close?

10      A     Yes, ma'am.

11                   ATTORNEY SCHNEIDER: I'm going to do it on  
12           accident. I'm going to ask to approach.

13                   THE COURT: You may.

14                   ATTORNEY SCHNEIDER: Thank you.

15      Q     (BY ATTORNEY SCHNEIDER) I'm going to show you a  
16           couple diagrams, Mr. Kersten. This one has been  
17           already introduced. It's Exhibit 1. Are you  
18           familiar with what's depicted here in Exhibit 1?

19      A     Yes, ma'am.

20      Q     And what area is that?

21      A     That's the main entrance into the lobby and then also  
22           it depicts the bar area.

23      Q     Okay. And -- of Luna Lounge, correct?

24      A     Yes, ma'am.

25      Q     The stairs that are marked on the right-hand side of



1 Exhibit 1, what do they lead to?

2 A The lower level there is bathrooms and a janitor  
3 closet down there.

4 Q So other than going to the bathroom, there is not  
5 another bar area or anything like that?

6 A On that level, no, ma'am.

7 Q And is Exhibit 1 only truly a partial display of Luna  
8 Lounge as it was back in 2013?

9 A Yes, ma'am.

10 Q Okay. So if we would continue up, literally off the  
11 diagram, what would be next then at Luna?

12 A If you're going to continue going towards the top of  
13 the page, there was another sub-level with a dance  
14 floor and another complete bar.

15 Q Okay. Were there also some other elevated areas  
16 where there were chairs or couches?

17 A There was a balcony that went up there as well as two  
18 balcony raised areas that were not connected to the  
19 balcony that went across the entire front over the  
20 stage area.

21 Q And then is there a separate bar completely that is  
22 on a second level?

23 A Yes, ma'am.

24 Q And what was the name of that establishment?

25 A Drinks Inc.

1 Q Can you access Drinks from inside Luna?

2 A Yes, ma'am, you can.

3 Q But they were operated as separate businesses?

4 A Correct.

5 Q But if people needed to leave Drinks, was there a  
6 separate exit or did they have to come back through  
7 Luna?

8 A There was a separate exit.

9 Q They could choose to come through Luna, correct?

10 A Not every night, just most nights.

11 Q Okay. All right. I'm just going to leave Exhibit 1  
12 up here.

13 And back to December 8th, so Sunday morning,  
14 right prior to bar close, do you remember where in  
15 the bar you were working?

16 A Earlier in the night prior, about a half hour to bar  
17 close time frame, I was walking around the bar, and  
18 after that then I had got moved up to the door so  
19 that the others could get cleaning up and getting  
20 ready to shut down and have people moving out.

21 Q When you were at that front door area, were there bar  
22 patrons that were sometimes waiting in that area?

23 A Usually there were people coming in and going --  
24 waiting for someone outside smoking, not sitting  
25 there drinking or anything like that, but yes, there

1           were other patrons in that area.

2       Q     And you brought up the smoking issue. Can you  
3           explain to the jury, back in December of 2013, were  
4           patrons allowed to smoke inside of Luna?

5       A     No, ma'am.

6       Q     So did that mean that main entrance had a lot of  
7           traffic at times?

8       A     Yes, ma'am, it did.

9       Q     And for people who were at Luna, is that the only way  
10          they could get in or out to smoke?

11      A     For Luna as far as customers, yes.

12      Q     As you were at that front door area, were you just  
13          focused on the front door, was your focus kind of  
14          that whole front lobby area?

15      A     Mainly on the front door making sure underage people  
16          were not coming in. However, you do kind of watch  
17          over your shoulder to see what's going on. I mean,  
18          there -- there were fights occasionally that would  
19          happen up there, and you had to be ready to jump in  
20          and kind of break it up before it happened.

21      Q     On this night, prior to the incident we're going to  
22          talk about in a little bit, had there been any  
23          disturbances or things you had to get involved in or  
24          break up that you recall?

25      A     I don't recall really having any major issues that

1 night, but to say no, I cannot.

2 Q Okay. That's fine.

3 And so you're kind of at the front door waiting  
4 for the bar to finish closing. What do you remember  
5 first that caught your attention?

6 A Prior to me moving up there, I did see the group of  
7 people talking surrounding Josh. I later found out  
8 who his name was. And it wasn't anything really to  
9 draw attention to, like a fight or anything like  
10 that, it looked like they were just standing talking.  
11 Otherwise the night was just winding down and getting  
12 to the point where you're tired and ready to close  
13 up.

14 Q Okay. And so I'm going to skip ahead and then I'm  
15 going to go back. Ultimately you provided some  
16 assistance to a gentleman named Joshua Richards,  
17 correct?

18 A Yes, ma'am.

19 Q So when you just testified saying that you saw some  
20 people near Josh, first I want to just clarify, the  
21 area where Josh ultimately was, is that the same area  
22 where you saw him and this group of people?

23 A Yes, ma'am.

24 Q But you said they were just talking, there was  
25 nothing coming too loud?

1 A Yes, ma'am, that's correct.

2 Q Nothing that was causing you any concern?

3 A At that time, no, ma'am.

4 Q Then what do you remember after that, Mr. Kersten?

5 A I ended up hearing what sounded to me at the time  
6 like a party popper going off, a little firework or  
7 something, and ultimately turned my head and it was  
8 not, it ended up being a very small caliber  
9 gunshot.

10 Q Do you have any military background?

11 A Yes, ma'am.

12 Q And what is that?

13 A I'm United States Marine Corps, Huey door gunner.

14 Q So you would have a lot of experience with firearms  
15 because of that?

16 A Yes, ma'am.

17 Q Did you in that experience handle guns such as .25  
18 caliber?

19 A No, ma'am. That was very, very small. After it  
20 ended up going off and I realized it was not, I knew  
21 it was a small caliber. I told one of the responding  
22 officers that it sounded like a .22 caliber.

23 Q And that's based upon your training and your  
24 experience with firearms?

25 A Yes, ma'am.

1 Q So at the time you hear this pop, do you remember  
2 what direction you were looking?

3 A When it first happened, I was looking at the door,  
4 and I ultimately looked to my left towards the  
5 stairs, and that's when the noise and the direction  
6 that it had come from.

7 Q What do you remember next at that point?

8 A Chaos, people running out the door.

9 Q Did it seem like a lot of people, a few people, or  
10 what do you remember?

11 A I remember people that were standing around Josh  
12 bolting out the door. There were some females that  
13 had ran out the door. Another gentleman who I still  
14 work with, Adam, I had him kind of block it off so  
15 people would get out of the area and prevent anything  
16 from getting kicked around or taken off that wasn't  
17 supposed to be.

18 Q And when these people tried to run out the door, Mr.  
19 Kersten, did you try to stop them at all?

20 A Not at all.

21 Q And were they moving fast or slow?

22 A They were running.

23 Q Were you able to pay attention to exactly how many  
24 went out the door or whether -- how many males or how  
25 many females?

1     A     I paid attention to who was standing around him. I  
2           noted the direction that they ran. I can tell you  
3           for certain that there was two females, and after  
4           that it just kind of blurred. There was probably  
5           about a total of ten people that ran out the door,  
6           and that was all subsequent afterwards.

7     Q     So you had seen Josh by some people in that landing  
8           area, and you remember them running out?

9     A     Yes, ma'am.

10    Q     Do you remember which direction they ran to?

11    A     They ran out the door towards the right, so they  
12          would be heading towards West College.

13    Q     After the people started leaving, were you able to  
14          see where Josh was then?

15    A     Yes, ma'am.

16    Q     And it seems like an odd question, I'm sorry, Mr.  
17          Kersten, how was his body positioned or where was  
18          he?

19    A     Should I point it on the diagram?

20    Q     If you recall, yes.

21    A     His feet were almost parallel here, with his head  
22          almost right there at the top of the stairs.

23    Q     Okay. So you -- when you first -- and I'm just doing  
24          this for the record, you said his feet were here, you  
25          put his feet closer to the doorway that would get you

1           into the bar, correct?

2     A     Yes, ma'am. Approximately, I would say, within a  
3           foot-and-a-half.

4     Q     And you said his -- his head then was near the  
5           stairwell or that --

6     A     That partial wall there. It was about another, I'd  
7           say, just a little past center point.

8     Q     Okay. Did you and other employees try to assist?

9     A     Yes, ma'am.

10    Q     Do you remember going up to try to make an assessment  
11          on him?

12    A     Yes, ma'am, I do.

13    Q     Part of your military training did you have that  
14          experience as well?

15    A     Yes, ma'am.

16    Q     What do you remember when you went up to Josh, Mr.  
17          Kersten?

18    A     First thing was push people back, get them away.  
19          Second thing was I directed Adam towards the door to  
20          block more people from trying to come in. Next thing  
21          I did is I tried to take a pulse on him, and he was  
22          just completely nonresponsive. He did have, as I was  
23          telling the 911 dispatcher, it was a gunshot wound to  
24          his left ear, entered directly in the canal. And I  
25          could not find an exit wound whatsoever, and his eyes



1           were kind of rolled in the back of his head at that  
2           point. I just stopped. There was no  
3           resuscitation.

4       Q     To help the jury understand, what was the lighting  
5           like in this area back on this night?

6       A     Very dim.

7       Q     Did Luna have, in this area, and I might not use the  
8           right word you would call them, but I would call them  
9           like black lights where it's -- the white is more  
10          reflective?

11      A     In that area, no. It was, I want to say, maybe a  
12          total of four can lights in the upper area for that,  
13          and then towards the front entrance there was more  
14          lighting for IDs and such. That was kind of a dark  
15          point between the main door and the entrance into the  
16          bar area.

17      Q     When you heard that pop and then saw Josh, did it  
18          surprise you?

19      A     Yes, ma'am. It's not something I was ready for.

20      Q     Did you try to -- even though you said you couldn't  
21          provide additional assistance to Josh, did you try to  
22          make sure he stayed where he was?

23      A     Yes, ma'am.

24      Q     Did other employees come to where you were to try to  
25          provide assistance?

1     A     I had Adam, who at the time was not an employee,  
2           blocking the doorway, and Chris Vanden Heuvel, he was  
3           the owner of Luna, he was in the main office on the  
4           phone, Adam was on the phone, and I had been as well,  
5           and I ended up hanging up because there was already  
6           two on there, and I got a phone call back. I would  
7           say within a matter of minutes we had Appleton police  
8           there and we just shut it down.

9     Q     When you're working these shifts, Mr. Kersten, are  
10           you allowed to drink?

11    A     No, ma'am.

12    Q     Did you ever see, Mr. Kersten, the person who fired  
13           the shot?

14    A     I cannot say with 100 percent certainty who fired the  
15           shot. However, I was able to recognize the two  
16           people that would have been on Josh's left-hand side,  
17           and ultimately there is no other way that it could  
18           have come from with the close proximity that they  
19           were surrounding him, yes.

20    Q     Okay. So did you provide a description of those two  
21           people to officers if you could?

22    A     Yes, ma'am, I did.

23    Q     The area that would have been -- if I'm looking at  
24           the stairs on that diagram, I'm facing the stairs,  
25           the area to my left would be that opening to the bar,

1 correct?

2 A Yes, ma'am.

3 Q From where you were positioned in that front  
4 entrance, were you able to see directly into -- if  
5 people could or were passing in and out from that  
6 opening?

7 A If you looked over and had to actually turn your  
8 head, yes, you could, but peripheral vision, no.

9 Q Were there other people in that area besides Josh and  
10 the people you had named?

11 A Yes, ma'am.

12 Q You had mentioned Adam. Adam is someone you now are  
13 more acquainted with?

14 A Yes, ma'am, that's correct.

15 Q Do you know where Adam was when this happened?

16 A When it first happened, Adam was standing just to --  
17 well, my left of the door on the inside with his back  
18 to the wall. He would have been looking straight  
19 over at that area and have almost a clean line of  
20 sight.

21 Q So you have Adam. Were there people near him?

22 A Yes, ma'am, there were a few people. I want to say  
23 they were the two females that had ran out the  
24 door.

25 Q And then there's people by Josh?

1 A Yes, ma'am.

2 Q People could have been going up or down the stairs as  
3 well?

4 A Yes, ma'am, there was.

5 Q And then you have the opening in -- where people  
6 could have entered that area from the bar.

7 A Yes, ma'am.

8 Q When officers arrived, did you tell them about the  
9 people and the people you saw running to the -- I'm  
10 going to say out the doors and to the right?

11 A Yes, ma'am.

12 Q And that's because you remembered seeing those people  
13 near Josh earlier in the night.

14 A Yes, ma'am. From the earlier time that I had seen  
15 them until the time of the shooting, yes, they were  
16 -- they really do not move from that area.

17 Q Okay. And as people were running out the door, was  
18 your focus trying to pay attention to them or was  
19 your focus on Josh?

20 A My focus shifted onto Josh.

21 Q When officers arrived, did you go anywhere with  
22 them?

23 A I ended up going and directing one of the officers to  
24 the upstairs portion of Luna - well, it would have  
25 been Drinks Inc. - to conduct the interview areas,

1 giving an initial statement to them. I had to stick  
2 around, obviously, for -- throughout the night, and  
3 then at that point we went down and I showed officers  
4 on the security footage who I was referring to  
5 running out the door.

6 Q Okay. And just to help the jury understand, it  
7 wasn't bar closing yet?

8 A Correct.

9 Q Was the bar pretty full at this time?

10 A Yes, ma'am.

11 Q And was that a happy group that they had to stay  
12 after this happened?

13 A No, ma'am.

14 Q Had you prior to this night ever watched any of that  
15 video that was at Luna?

16 A I'm sorry. Can you rephrase?

17 Q Sure. Probably a bad question.

18 So prior to December 8th of 2013, had you ever  
19 gone and watched any of the video cameras that are  
20 available at Luna?

21 A No, ma'am.

22 Q For the jury's sake, it's taken in not a color frame  
23 image, correct?

24 A Correct. Black and white.

25 Q The bar is very dark, correct?

1 A Yes, ma'am.

2 Q So when you went to watch some of those images with  
3 the officers, that's what you did this night,  
4 right?

5 A Yes, ma'am.

6 Q Is there any colors that are seen at all?

7 A No, ma'am. Black and whites, grays.

8 Q Shades of gray? Okay.

9 Is there a camera that covers that front door  
10 area where you were positioned?

11 A Yes, ma'am.

12 Q Are you aware of a camera by the bar area?

13 A There's one in the bar, but it did not cover that  
14 little archway into the front foyer, I guess you  
15 would call it.

16 Q So there's no camera that captured this image where  
17 Josh was?

18 A No, ma'am.

19 ATTORNEY SCHNEIDER: May I -- I'm going to  
20 do it every time. I won't ask to approach anymore,  
21 but I'm going to do it.

22 THE COURT: And just so the jury knows,  
23 I've told counsel they don't have to ask me for  
24 permission to approach. If they do, it's fine; if  
25 they don't, it's fine.

1 ATTORNEY SCHNEIDER: Thank you.

2 THE COURT: We've already covered that  
3 issue.

4 Q (BY ATTORNEY SCHNEIDER) Mr. Kersten, showing you  
5 some photographs that are Exhibits 20, 21, 22, 23 and  
6 24, are you familiar with all that is depicted  
7 here?

8 A Yes, ma'am.

9 Q And I don't know which one you want to use, but is  
10 the area where you were standing at the time this  
11 happened depicted here on one of the exhibits?

12 A Yes, ma'am. The very bottom photo is where. Pretty  
13 much the chair and table here, I was just on the  
14 other side of that.

15 Q Is that an area where people came in, you could check  
16 IDs?

17 A Yes, ma'am.

18 Q And you said -- was there extra lighting in that area  
19 for you to do that?

20 A Yes, ma'am.

21 Q But is it what we would call like a normal, you go in  
22 your bedroom, you turn on the lights, is it that  
23 much?

24 A No, ma'am. It's more of an ambient light.

25 ATTORNEY VISHNY: I'm sorry. What exhibit

1 number was that that he pointed to?

2 ATTORNEY SCHNEIDER: 24.

3 ATTORNEY VISHNY: Okay. Thank you.

4 Q (BY ATTORNEY SCHNEIDER) I'm going to show you a  
5 board that's been previously marked Exhibit 33.

6 Starting with the top image that's marked 33A,  
7 are you familiar with what's there, Mr. Kersten?

8 A Yes, ma'am.

9 Q And what's depicted there?

10 A That would be myself with my back facing the camera,  
11 and then it would be Adam over there with the two  
12 females that I was referring to.

13 Q Okay. And just -- is there anything about your  
14 clothing that tells us which one you --

15 A The security wording on the back.

16 Q Okay. And then is there a time stamp? And I -- it's  
17 odd for you to get up, but that's okay. Is there a  
18 time stamp on that photograph?

19 A Yes, ma'am, there is.

20 Q What time stamp is there? You can get up if you need  
21 to.

22 A 1:50:17.

23 Q And then continuing, 33B, we still see those same  
24 three people, correct?

25 A Yes, ma'am.



1 Q And which direction are you looking at that time?

2 A At that point my head would have been directed almost  
3 straight over looking at Josh, seeing still those  
4 four people, looking around, paying -- surveying the  
5 area.

6 Q But nothing that -- was there anything that caught  
7 your attention where you needed to go in this area?

8 A No, ma'am, not at that point.

9 Q And what's the time on 33B?

10 A That would be 01:50:23.

11 Q And then continuing, 33C --

12 ATTORNEY VISHNY: I'm sorry. I couldn't  
13 hear the last answer.

14 ATTORNEY SCHNEIDER: 1:50:23.

15 ATTORNEY VISHNY: Okay.

16 ATTORNEY SCHNEIDER: Just give me one  
17 second.

18 Q (BY ATTORNEY SCHNEIDER) And then moving to 33C, I  
19 don't remember if I asked you which direction you  
20 were looking, but where are you looking in this  
21 one?

22 A For 33C still looking at the door for patrons coming  
23 in and out.

24 Q And then do you mind standing and tell us what time  
25 stamps on that one?

1 A 01:50:24.

2 Q Why don't you stay right here. 33D, where is your  
3 attention drawn to now, Mr. Kersten?

4 A That would be straight over at where I just heard the  
5 gunshot come from.

6 Q And the time stamp?

7 A 01:50:25.

8 Q Why do you believe that that's the point at which you  
9 heard that gunshot?

10 A Because that's -- well, depicted straight in the  
11 picture, everything that was going on with Adam just  
12 now turned, everybody's attention is right there, and  
13 prior to that my head was looking at the door.

14 Q Okay. So at some point between 1:50:24 to 1:50:25 is  
15 your best recollection of when that -- you heard that  
16 shot?

17 A Yes, ma'am.

18 Q And then you went basically off camera and went to  
19 assist, correct?

20 A Yes, ma'am.

21 Q And that's -- is that what we see in 33E, 33F to  
22 33G?

23 A Yes, ma'am.

24 Q And then continuing in 33H, what do we see then?

25 A Those would be the gentlemen I seen standing around

1 him exiting the door along with a bunch of other  
2 people down here in 33J, I believe it is.

3 Q It's I and then J.

4 A Yup.

5 ATTORNEY SCHNEIDER: I would just move 33  
6 into evidence; and I have no other questions then at  
7 this time.

8 THE COURT: Any objection to receipt of  
9 Exhibit 33?

10 ATTORNEY WEITZ: No objection, Your Honor.

11 THE COURT: And just so that I'm clear for  
12 record purposes, there were multiple images, it's all  
13 considered Exhibit 33, correct?

14 ATTORNEY SCHNEIDER: Correct. That's why  
15 we can kind of subdesignated them as 33A, 33B --

16 THE COURT: Very good.

17 Defense, any questions for Mr. Kersten?

18 ATTORNEY WEITZ: Yes, Your Honor. Thank  
19 you.

20 **EXAMINATION OF DANIEL J. KERSTEN**

21 **BY ATTORNEY WEITZ:**

22 Q Mr. Kersten, you were working as a bouncer, security  
23 the night of this incident, right?

24 A Correct.

25 Q And as you testified earlier, towards the end of the

1           night you moved up to the front door and that's where  
2           you were working in that capacity?

3     A     Yes, sir.

4     Q     Okay. And as a bouncer, part of your job is to check  
5           IDs, kind of watch out for trouble, all those sorts  
6           of things?

7     A     Yes, sir.

8     Q     And you testified that Luna is kind of a dimly lit or  
9           darker bar, right?

10    A     Yes, sir, that's correct.

11    Q     But when you're in there for a while, it's not like  
12           going from a very sunny day into a very dark room,  
13           you're able to kind of adjust?

14    A     Correct. You can see pretty fairly decent but not  
15           enough to where you could make out something in, you  
16           know, pockets per se.

17    Q     But you certainly can distinguish things such as like  
18           between black and white?

19    A     Yes, sir.

20    Q     Okay. You may not be able to say exactly what shade  
21           of red someone was wearing, but you can make those  
22           types of determinations?

23    A     Yes, sir.

24    Q     And as I said earlier, part of your job is that you  
25           kind of are watching out, just constantly being on

1 alert, surveying for -- to make sure there is no  
2 problems, right?

3 A Yes, sir.

4 Q Okay. And I think you also testified that  
5 occasionally there are fights that happen in that  
6 area so you knew that that was a potential concern.

7 A Yes, sir.

8 Q Okay. So you kind of -- you're standing at the front  
9 door, you're keeping an eye on things, you said that  
10 earlier you may have seen some people standing around  
11 Mr. Richards, right?

12 A Yes, sir.

13 Q But it wasn't anything that necessarily caught your  
14 attention or seemed like it would be a potential  
15 problem.

16 A Correct.

17 Q Okay. And at some point when you're not looking in  
18 that area, you heard what you described as like a  
19 party popper or a firework.

20 A Yes, sir.

21 Q And that's when you immediately kind of turn your  
22 attention to what's going on --

23 A Yes, sir.

24 Q -- to the left of there.

25 And as soon as you hear that pop, I believe you

1 described it was like a first group of guys that are  
2 out the door like that.

3 A Yes, sir.

4 Q Very quickly after the gunshot.

5 A Very.

6 Q And they're kind of pushing their way out the door,  
7 throw the doors open.

8 A Yes, sir, that's correct.

9 Q And the second guy in that group, I believe you gave  
10 the description that as soon as he got out the door,  
11 it looked like he was kind of taking off his hat and  
12 coat?

13 A Yes, sir.

14 Q Okay. And then after that first group, there was  
15 more people that left but not quite as quickly as  
16 those first guys --

17 A Correct.

18 Q -- that ran out the door. Okay.

19 In this area where you saw the group of people  
20 standing and talking, you didn't see any sort of  
21 fight happen, right?

22 A No, sir.

23 Q You didn't see any punches thrown?

24 A No, sir.

25 Q No pushing or anything like that?

1 A No signs of an altercation at all.

2 Q But you would be looking for those kind of things  
3 working security?

4 A Yes.

5 Q So you would have noticed if that would have  
6 happened?

7 A It's a big area, you can't watch everybody, but yes,  
8 you are trying to scan the area and make sure.

9 Q Turning back then to this group that you saw run out,  
10 I believe on direct you described that those were the  
11 people that you saw in the area of Mr. Richards --

12 A Yes, sir.

13 Q -- earlier on that evening.

14 And when police initially arrived, you give them  
15 a description of those individuals as being the  
16 suspects in this case.

17 A Yes, sir.

18 Q And I believe the description that you gave was that  
19 it was a short male Asian?

20 A Yes, sir.

21 Q And you thought he was quite short, four foot five,  
22 four foot six?

23 A Somewhere in that vicinity.

24 Q Okay. And you described that person as wearing a  
25 white hat with a straight brim?

1 A Yes, sir.

2 Q You said it was a white jacket or a puffy vest?

3 A White vest, gray undershirt was my exact words.

4 Q And that was the guy that was pushing people out of  
5 the way?

6 A Making a beeline for the door, yes.

7 Q And removing his jacket as he's going out the door?

8 A Correct.

9 Q Okay. And that was the same guy again that you saw  
10 by Josh's left side?

11 A One of them, yes, sir.

12 Q Okay. And he goes to the right when you go -- if  
13 you're standing like you were, looking at the front  
14 doors, he would be going to the right or westbound on  
15 College Avenue?

16 A Correct.

17 Q And that's actually the direction that the other guy  
18 went too, right?

19 A Yes, sir, I believe so.

20 Q And then a little time after officers arrived and  
21 kind of secured the scene, you also went up then to  
22 that interview area that you described earlier and  
23 talked to Sergeant Tauber, right?

24 A To an officer, yes, sir. I'm not a hundred percent  
25 of the name, but yes, that does sound familiar.



1 Q But it was in the area where they were conducting  
2 interviews.

3 A Yes, sir.

4 Q Okay. And he was recording it in that area?

5 A I believe so, yes, sir.

6 Q Okay. And that description that I just went through  
7 with you, you told him that exact same description --

8 A Yes, sir.

9 Q -- that you're giving here today.

10 A That's correct.

11 Q Okay. Just one last thing I wanted to confirm with  
12 you. You said that before this night you had never  
13 had an occasion to look at this security video  
14 before.

15 A Never had a reason to.

16 Q Okay.

17 ATTORNEY WEITZ: Thank you. That's all I  
18 have.

19 THE COURT: Any redirect, Attorney  
20 Schneider?

21 ATTORNEY SCHNEIDER: A few follow-ups.

22 **EXAMINATION OF DANIEL J. KERSTEN**

23 **BY ATTORNEY SCHNEIDER:**

24 Q Mr. Kersten, since this event have you had the  
25 opportunity to see some cell phone video that was

1 taken at Luna?

2 A No, ma'am, I have not.

3 Q Okay. Do you remember making any comments when  
4 officers first got there?

5 A The comments that I made was giving the description,  
6 the direction, that sort of thing. To my exact  
7 comments and words, no, I'm sorry, I can't say.

8 Q And again, when you were giving that description of  
9 the people, you weren't identifying them as the  
10 shooter but people who had been around Josh.

11 A Correct.

12 Q And is it true that in the time when you had looked  
13 there, you go look straight again, you then hear the  
14 shot, someone could have come from that bar area.

15 ATTORNEY WEITZ: Your Honor, I'm going to  
16 object at this point.

17 THE COURT: Why don't you come on up.  
18 Approach.

19 (A bench conference was held.)

20 Q (BY ATTORNEY SCHNEIDER) Exhibit 33B, which direction  
21 are you looking?

22 A I would be looking directly at the stair area that  
23 was over there.

24 Q And then Exhibit 33C, which direction are you  
25 looking?

1 A Out towards College Avenue.

2 Q So at this point your focus is not at all back in the  
3 area where Josh was.

4 A Correct.

5 Q Was your focus in that time at all in that opening  
6 from the bar to that landing area?

7 A When you look over towards Josh, you would see it,  
8 but no, my focus at that time was straight out the  
9 door, not at that area.

10 Q Okay. So people could have came up the steps or came  
11 from the bar and you might not have seen them.

12 A Yes, ma'am, that's correct.

13 ATTORNEY WEITZ: Your Honor?

14 THE COURT: Approach.

15 (A bench conference was held.)

16 Q (BY ATTORNEY SCHNEIDER) And you are confident that  
17 in reviewing these photos you're confident by your  
18 reaction when the shot happened?

19 ATTORNEY WEITZ: Your Honor, I'm going to  
20 object again for the same reason.

21 ATTORNEY SCHNEIDER: I'll just say this.

22 Q (BY ATTORNEY SCHNEIDER) Looking at these photos,  
23 when did the shot happen?

24 A The shot would have happened at -- right between 33C  
25 and 33D when my attention was at College Avenue. No,

1 I was not looking at the time when the shot went off.  
2 Hearing the shot is what directed my attention over  
3 back to that area.

4 ATTORNEY SCHNEIDER: Okay. Then I have  
5 nothing further.

6 THE COURT: Attorney Weitz, any follow-up?

7 ATTORNEY WEITZ: No.

8 THE COURT: Ladies and gentlemen, any  
9 questions you wish to submit for consideration?

10 (No response.)

11 THE COURT: Okay. Very good.

12 Mr. Kersten, I thank you for your testimony,  
13 sir. You are excused.

14 ATTORNEY SCHNEIDER: Is he released?

15 ATTORNEY VISHNY: We might recall him, so  
16 we need -- Mr. Valdes can talk to him and get a phone  
17 number where we can reach you.

18 ATTORNEY SCHNEIDER: Did I move that?

19 THE COURT: That's fine. And then you have  
20 someone getting your next witness or are we all set?

21 ATTORNEY SCHNEIDER: Yes. She should be.  
22 I just need to make sure with Miss Jens.

23 We'll do Brittany Olson next then, Your Honor.

24 THE COURT: Okay.

25 ATTORNEY SCHNEIDER: I think I threw her

1 off a little bit, but she said she's right up here.

2 THE COURT: And if you would please come to  
3 the witness stand. If you would remain standing, we  
4 will have the clerk swear you in.

5 THE WITNESS: Okay.

6 THE CLERK: Raise your right hand please.

7 (Oath administered to witness.)

8 THE WITNESS: I do.

9 THE CLERK: Please state your full name and  
10 spell it for the record please.

11 THE WITNESS: Brittany Olson,  
12 B-R-I-T-T-A-N-Y, O-L-S-O-N.

13 THE COURT: All right. You may be seated.

14 THE WITNESS: Okay.

15 THE COURT: And then, Attorney Schneider,  
16 your witness.

17 ATTORNEY SCHNEIDER: Thank you.

18 **EXAMINATION OF BRITTANY OLSON**

19 **BY ATTORNEY SCHNEIDER:**

20 Q Miss Olson, what's your current occupation?

21 A A social worker for Brown County Child Protection.

22 Q Did you know someone named Joshua Richards?

23 A I did.

24 Q How did you know him?

25 A He was my boyfriend.

1 Q When did you remember first meeting him?

2 A On my brother's birthday, June 16th, 2013.

3 Q When did you -- there's probably always a gray line,  
4 but when do you start dating him or seeing him?

5 A We started seeing each other pretty much after that  
6 night.

7 Q What city was he living in?

8 A Green Bay.

9 Q And what city were you living in?

10 A Green Bay.

11 Q What type of work did Josh do?

12 A He was a mechanic.

13 Q Do you remember where if you know?

14 A A place in DePere.

15 Q And did he hold that job the entire time you knew  
16 him?

17 A Yes.

18 Q Was it a full-time job?

19 A Yes.

20 Q Miss Olson, I want to direct your attention to a  
21 night in December of 2013, December 8th, which --  
22 actually the 7th, Saturday, into the morning of  
23 December 8th. Did you have specific or special plans  
24 for that night?

25 A We did.

1 Q What were those plans?

2 A To go on a bus to Appleton.

3 Q How did it come or how was it arranged that you were  
4 going to go on this bus?

5 A The owner of the bus, Galen Sherbon, was taking two  
6 of his buses to Appleton.

7 Q Was he someone you knew?

8 A Yes.

9 Q Was he someone that knew Josh?

10 A Yes.

11 Q Do you remember where the bus left from?

12 A Stadium View in Green Bay.

13 Q And you might have said this, Miss Olson, I  
14 apologize, was there one or two buses?

15 A Two.

16 Q And what was going to be the plan then when the buses  
17 arrived in Appleton?

18 A To go bar hopping.

19 Q Did you know everyone that was on the bus?

20 A No.

21 Q So was it just anyone could sign up for this bus trip  
22 or was it a party or anything like that?

23 A From my understanding it sounded like Josh and Galen  
24 invited people, friends.

25 Q When you arrived, did everyone in the bus stay

1 together?

2 A No.

3 Q Where do you remember going?

4 A I don't remember.

5 Q Do you remember -- let me ask you this, Miss Olson.

6 Prior to that night had you ever really been downtown

7 Appleton at all?

8 A Never.

9 Q Then I might ask it this way. Do you remember going  
10 to more than one location or just one location?

11 A More than one.

12 Q You just don't know the name.

13 A Right.

14 Q If I said the name Luna Lounge, do you recall that  
15 location?

16 A Yes.

17 Q Were you ever there on this evening?

18 A I was.

19 Q And who were you with?

20 A I was with Josh.

21 Q Was Josh drinking that night?

22 A He was.

23 Q Do you remember how much he might have had?

24 A I don't remember.

25 Q You'd been with Josh for several months by that



1 point. On this night, even with his drinking, was he  
2 able to talk to you?

3 A Yes.

4 Q Did you understand him?

5 A Yes.

6 Q Any concerns about how much he had to drink that  
7 night?

8 A Not at all.

9 Q When you were out that night at, I'll just say it  
10 this way, other places and Luna, because you don't  
11 know where else, the names, was there ever any  
12 issues, fights or anything that you were concerned  
13 about?

14 A No.

15 Q Any arguments, you know, not maybe you and Josh but  
16 other people from the bus that you saw or  
17 witnessed?

18 A No.

19 Q Miss Olson, I want to show you an exhibit, and it's  
20 marked Exhibit 32. I'm going to have you look at  
21 just the top pictures, 32A and 32B. Do you recognize  
22 anyone in those photos?

23 A Yes. I recognize myself and Josh.

24 Q And which image is that?

25 A 32A I recognize myself in the doorway, and then 32B

1 Josh.

2 Q So in 32A there is someone that's not yet into the  
3 bar but in the door opening, is that who you're  
4 identifying as yourself?

5 A Yes.

6 Q Okay. Do you mind - I'm just giving you a blue  
7 marker - just writing your name underneath where  
8 you're shown in 32A? Like right in the white area  
9 would be fine.

10 A Okay. (Witness complying.)

11 Q And then in 32B can you write Josh's name underneath  
12 where he is?

13 A (Witness complying.)

14 Q Does 32A on the upper portion have a time stamp  
15 noted?

16 A Yes.

17 Q And what's that time stamp?

18 A 11:06 a.m.

19 Q Okay. 11:06:29 is the time stamp?

20 A Yes.

21 Q Do you remember -- you can grab a seat.

22 A Okay.

23 Q After you arrived at Luna, was that the last -- did  
24 you and Josh go anywhere else after?

25 A No.

1 Q Were you familiar at all with Luna?

2 A No.

3 Q Had you ever been there before?

4 A No.

5 Q What generally do you remember about kind of like the  
6 layout of Luna?

7 A There was a dance floor and a bar area. The  
8 bathrooms were downstairs. That's about it.

9 Q Where in the bar did you and Josh go?

10 A We went to the bar area and the dance floor.

11 Q Miss Olson, I want to direct your attention to the  
12 end of the night. Do you remember when it was  
13 getting to be bar close where you might have been?

14 A We were on the dance floor up until that time.

15 Q And where did you go then?

16 A We were headed out leaving.

17 Q Where did you walk to?

18 A We walked towards the doorway.

19 Q Did you make it to the doorway with Josh?

20 A No.

21 Q Where if anywhere did you stop along the way?

22 A Well, yes, I guess we did make it to -- up to the  
23 doorway.

24 Q Okay. Do you remember anything related to the  
25 bathrooms on your way out?

1 A I don't remember.

2 Q Okay. On your way heading towards the door, was  
3 there any issues that occurred?

4 A There were a group of people that came up to us.

5 Q Do you remember where in the bar you were?

6 A It was kind of in the doorway on our way out.

7 Q So not in an area where there is a bar where you  
8 could walk up and get a drink?

9 A No.

10 Q Do you remember anything about the group, was it  
11 males, females?

12 A It was males and one female.

13 Q Do you remember anything about their race?

14 A They were Asian.

15 Q Do you know anything about Josh's race or  
16 nationality?

17 A He's part Korean.

18 Q When the people or the group approached you, I think  
19 is what you said, do you remember anything that  
20 occurred then?

21 A There was an altercation with the guys were pushing  
22 him, and I remember trying to get in between to break  
23 them up, and the next thing I remember was that he  
24 was laying on the ground.

25 Q Do you remember hearing anything prior to that?

1 A Just arguing, but I don't know what it was about.

2 Q Do you remember seeing these people at all earlier in  
3 the night?

4 A I don't remember.

5 Q When you then saw Josh on the ground, how did you  
6 feel?

7 A I can't even describe it.

8 Q Shocked?

9 A Shocked. Yeah. Scared. Angry.

10 Q Do you remember what you did then?

11 A I started yelling for people to call 911.

12 Q Do you remember, Miss Olson, the people that had been  
13 around Josh, what if anything they did after he was  
14 then on the ground?

15 A After he was on the ground, then the people started  
16 leaving, and I remembered that I ran after -- outside  
17 I ran after the girl that was with them.

18 Q Do you remember why you ran after her?

19 A Because she was with them who did this. And I don't  
20 know what I was thinking.

21 Q At that point were you still shocked and angry?

22 A Yes.

23 Q Do you remember what if anything you did then?

24 A I remember running after her and taking her on the  
25 sidewalk and yelling at her saying that I know she

1 knows who they are and where they went and trying to  
2 find out where -- where they are.

3 Q Miss Olson, I'm going to show you an exhibit board  
4 that is marked 34 and then we have a series of  
5 exhibits with 34 and then a letter designation.  
6 Okay? Do you recognize yourself in any of these  
7 photographs?

8 A I do in the bottom, 34I I can start -- I can see  
9 myself.

10 Q What portion of your body do we see in 34I?

11 A My arm.

12 Q And then is there any other image where you see  
13 yourself?

14 A In 34J, 34K and 34L.

15 ATTORNEY VISHNY: I'm sorry. I couldn't  
16 hear the answer. 34J and --

17 A 34K and 34L.

18 Q Is there anything on your person that we can somewhat  
19 see in all of those photographs?

20 A I remember I was wearing that jacket and my purse.

21 Q Okay. I'm going to give you a blue marker. In 34K  
22 why don't you write your name below and then draw a  
23 line literally so the line connects to your body.

24 A (Witness complying.)

25 Q Thank you. You're outside, you had tackled the girl

1           and you were saying things to her. Do you remember  
2           where you were or what happened after that?

3     A     I don't completely remember what happened after  
4           that.

5     Q     Were you concerned for Josh?

6     A     Yes.

7     Q     Do you ever remember being back inside of Luna?

8     A     Yes. I remember after that I did go back inside and  
9           there were people blocking me and I kind of fought to  
10          get back in.

11    Q     Were you able to, after you got back inside, go near  
12          Josh at all?

13    A     I can't remember. I remember at one point I was  
14          kneeling down by him.

15    Q     Miss Olson, was he able to respond at all?

16    A     No.

17    Q     Do you remember the police arriving?

18    A     I remember seeing them there.

19    Q     What was your concern at that point then?

20    A     I didn't think that he was still alive.

21    Q     You did not think he was still alive?

22    A     Un-hun.

23    Q     Do you remember talking to the police, Miss Olson?

24    A     I do.

25    Q     And where did that happen, if you know?

1 A I know I talked to Detective Cary Meyer in his police  
2 car outside of the bar.

3 Q Did you speak with him anywhere else?

4 A At the police station.

5 Q And did you tell him -- did you answer his  
6 questions?

7 A I did.

8 Q Did you tell him what you could remember back then?

9 A I did.

10 ATTORNEY SCHNEIDER: I don't have any other  
11 questions.

12 THE COURT: Defense?

13 ATTORNEY WEITZ: Can I have one moment,  
14 Your Honor?

15 THE COURT: Absolutely.

16 ATTORNEY WEITZ: Thank you.

17 THE COURT: Absolutely.

18 **EXAMINATION OF BRITTANY OLSON**

19 **BY ATTORNEY WEITZ:**

20 Q Miss Olson, Saturday night going into Sunday morning,  
21 you came down that night intending to have a good  
22 time, right?

23 A Right.

24 Q That was the plan. And you had gone to a number of  
25 bars on that trip?



1 A Yes.

2 Q You were doing some dancing?

3 A Yes.

4 Q Drinking, those types of things?

5 A Right.

6 Q And you certainly didn't expect something like this  
7 was going to happen.

8 A No.

9 Q As far as that night, you have some memory lapses  
10 from just the fact that you had been drinking all  
11 night?

12 A That and probably shock.

13 Q Okay.

14 ATTORNEY WEITZ: I don't have any further  
15 questions.

16 THE COURT: Any follow-up, Attorney  
17 Schneider?

18 ATTORNEY SCHNEIDER: No.

19 THE COURT: Members of the jury, do you  
20 wish to submit any questions for consideration?

21 (No response.)

22 THE COURT: Okay. Miss Olson, I thank you  
23 for your testimony.

24 ATTORNEY MAIER: Your Honor, the State's  
25 next witness is Sean Kuether.

1 ATTORNEY VISHNY: Can we approach again?

2 THE COURT: Sure.

3 (A bench conference was held.)

4 THE CLERK: Please raise your right hand.

5 (Oath administered to witness.)

6 THE WITNESS: I do.

7 THE CLERK: Please state your full name and  
8 spell it for the record please.

9 THE WITNESS: Sean Kuether, S-E-A-N,  
10 K-U-E-T-H-E-R.

11 THE COURT: You may be seated, sir.  
12 Attorney who?

13 ATTORNEY MAIER: I am.

14 THE COURT: All right. Attorney Maier.

15 **EXAMINATION OF SEAN KUETHER**

16 **BY ATTORNEY MAIER:**

17 Q Mr. Kuether, how are you employed?

18 A As a police officer for the City of Appleton.

19 Q And how long have you worked as an officer for the  
20 City of Appleton?

21 A Approximately five-and-a-half years.

22 Q In that five-and-a-half years, have you been assigned  
23 to a particular unit or division of the Appleton  
24 Police Department?

25 A Yes, I've been assigned to two different units.

1 Q In 2013, specifically December, what was your  
2 assignment?

3 A Patrol unit.

4 Q And were you assigned to a particular area of the  
5 city on the shift that started December 7th and went  
6 into December 8th of 2013?

7 A Yes, that was I was in the northern district.

8 Q Around 1:51 a.m. on the 8th, did you hear a call come  
9 out for an incident that occurred downtown?

10 A I did.

11 Q And what was the nature of that call?

12 A Possible shots fired at the Luna nightclub.

13 Q Where were you when the call came out?

14 A I was sitting in the parking lot at the police  
15 department.

16 Q How far from Luna Lounge is the Appleton Police  
17 Department?

18 A Two-and-a-half to three blocks.

19 Q What did you do when you heard the call come out?

20 A I immediately drove to the scene.

21 Q When -- on the way in that two-and-a-half blocks, did  
22 you receive any instruction about what you were to do  
23 when you arrived?

24 A Yeah. The initial call over the radio was that they  
25 wanted arriving officers to secure the exterior of

1 the building and not let anybody exit.

2 Q Did you do that?

3 A I did.

4 Q Where were you at the bar in order to keep people  
5 from leaving?

6 A Well, when I initially got there I parked my squad  
7 car on the southwest corner of the building partially  
8 into College Avenue and partially on Division Street,  
9 and then I kind of moved back and forth between the  
10 corner of the building there and the emergency doors  
11 maybe 20 feet north against the building wall  
12 there.

13 Q And I'm assuming that as you're doing this other  
14 officers are arriving on scene as well?

15 A Correct. Officers were coming from all over the  
16 city.

17 Q Officer Vander Wielen would have been one of them?

18 A Yes.

19 Q At some point did you hear Officer Vander Wielen  
20 engage in some activity with someone?

21 A I did.

22 Q And can you describe what was going on and what you  
23 did?

24 A As officers were arriving, another officer took up a  
25 position to cover the side of the building and I

1 moved towards the front doors at which time I heard  
2 Officer Vander Wielen arguing with a female.

3 Q What did you do then?

4 A It appeared that she was very agitated and excited so  
5 I moved towards him to help calm her down.

6 Q What about her -- as you go from securing the door,  
7 making sure nobody leaves, to helping Officer Vander  
8 Wielen calm this person down, what about her actions  
9 and demeanor caused you to believe that she was  
10 agitated?

11 A She was screaming and yelling and Officer Vander  
12 Wielen was having to raise his voice to try to get  
13 her attention to calm her down.

14 Q Are you able to estimate how long it is after the  
15 shots fired call goes out that you're first arriving  
16 on scene?

17 A I was probably on scene within a minute or roughly, I  
18 would say, I mean I was only a few blocks -- few  
19 blocks away, and as soon as it was verified that we  
20 heard what we heard over the radio, I began moving  
21 that direction immediately.

22 Q Okay. And then from the time that you arrive on  
23 scene and you're securing the entrance to the time  
24 that you're going to help Officer Vander Wielen with  
25 this agitated woman inside, roughly how long is

1           that?

2     A     No longer than a few more minutes.

3     Q     Okay. Was this female crying?

4     A     Yes.

5     Q     What's the scene like at Luna as this is all  
6           happening?

7     A     It was extremely chaotic. They still had not turned  
8           on the lights or shut the music off and there were  
9           several hundred intoxicated people inside the bar.  
10          It was very close to bar close.

11    Q     Were you able, when you went to assist Officer Vander  
12          Wielen with the woman who was upset inside the bar,  
13          were you able to recall anything that she was  
14          saying?

15    A     Yeah. I -- in attempting to calm her down --

16                    ATTORNEY WEITZ: Your Honor, I'm going to  
17          object at this point.

18                    THE COURT: Approach.

19                    (A bench conference was held.)

20                    THE COURT: Mr. Maier, whenever you're  
21          ready.

22                    ATTORNEY MAIER: All right. Thank you.

23    Q     (BY ATTORNEY MAIER) Do you recall what the question  
24          was?

25    A     Vaguely.

1 Q What it was that this woman said while she was upset  
2 and dealing with you and Officer Vander Wielen.

3 A I asked her her name and she stated her name and then  
4 stated that her boyfriend had been shot in the  
5 head.

6 Q She continued to be upset and agitated or did she  
7 calm down?

8 A It was up and down. She would have moments of very  
9 calm where she would just basically sit there and  
10 cry, and then there were moments that she was very  
11 agitated and aggressive.

12 Q Define what you mean by "aggressive".

13 A There were multiple points where she tried to get up  
14 to move closer to the victim, to move near a bag -- a  
15 purse that she claimed that was hers that was  
16 scattered on the ground, but due to the entire area  
17 being a crime scene at that point, I needed to  
18 physically restrain her from doing those things.

19 Q So your concern once you're inside then, and Officer  
20 Vander Wielen, has changed to keeping people away  
21 from the person who is on the floor of the bar; is  
22 that correct?

23 A Correct.

24 Q And she wanted to get into an area that she just was  
25 not going to be allowed to get into?

1 A Correct.

2 Q And again, I'm assuming that as this is happening  
3 more officers are responding and investigators,  
4 correct?

5 A Correct. Officers were continuing to pour in from  
6 all over.

7 Q And did your role change as more people arrived on  
8 scene?

9 A Yes.

10 Q What did it become?

11 A Once we were comfortable with the security level of  
12 the immediate area of the lobby, I then basically  
13 became kind of the gate keeper for the door to make  
14 sure that nobody entered from outside and then  
15 continued to stay with the few staff and people that  
16 were kind of cordoned off in the area that I was  
17 standing.

18 Q And did you have another role then as more people  
19 arrived?

20 A Yes. Once the victim's girlfriend and others were  
21 being interviewed, I -- one of the bouncers made  
22 mention of a video camera system, and I was then  
23 asked to go and watch that to see if we could locate  
24 a video of the incident.

25 Q Were you able to do that?



1 A Yes.

2 Q The surveillance cameras inside the bar, I'm assuming  
3 they didn't have a projector or anything like we have  
4 in the courtroom today?

5 A Correct.

6 Q What were you viewing the camera on, I guess, is it  
7 just a simple monitor or display?

8 A Yeah. It was a small video monitor, might have even  
9 been just a computer screen.

10 Q Who -- who actually manipulated the camera controls  
11 to see what you were looking for?

12 A Initially the owner did as I had no idea how to  
13 operate the system. However, once I got the gist of  
14 it, I may have also manipulated the controls to fast  
15 forward or rewind.

16 Q How far back did you go, do you recall, before you  
17 started watching?

18 A We went back to roughly the time the call came out,  
19 maybe a minute or two before just to see if we could  
20 tell when and where the incident occurred.

21 Q Okay. You weren't able to actually see the shooting  
22 occur captured on camera though, correct?

23 A No.

24 ATTORNEY MAIER: Can we -- I think it might  
25 help to have at least the -- I don't know how the

1 lights divide, but it may help to have the lights  
2 reduced in here a little bit. That's fine.

3 ATTORNEY SCHNEIDER: Judge, just for the  
4 record, this would be the same disk we utilized  
5 earlier with Officer Vander Wielen. It's a disk  
6 numbered Item 31.

7 ATTORNEY WEITZ: While we're on that topic,  
8 Your Honor, I guess at this time this is a good time  
9 to move 31 and 97 into evidence.

10 THE COURT: Very good. Any objection?

11 ATTORNEY SCHNEIDER: No.

12 THE COURT: Very good. 31 and 97 will be  
13 received.

14 ATTORNEY MAIER: And, Officer Kuether and  
15 everyone else, we're going to show you a portion of  
16 video, the time stamp is 1:50:17, and we'll play  
17 through 1:52:48 and then I'll have a couple  
18 questions.

19 (Video played.)

20 ATTORNEY MAIER: Thank you. I think it  
21 it's okay. I think, if it's okay with everyone, we  
22 can keep the lights down.

23 THE COURT: That's fine.

24 Q (BY ATTORNEY MAIER) Officer Kuether, understanding  
25 that may not have been the exact moment you started

1 watching the video and it may not have been the exact  
2 moment you stopped watching the video that night, is  
3 that a fair and accurate depiction of what you recall  
4 seeing?

5 A Yes, it is.

6 Q Are you able to identify any of the people who came  
7 through the camera view during the portion we just  
8 used today?

9 A There is two that I recognized immediately.

10 Q And who is that?

11 A Dan Kersten the bouncer and then Brittany Olson.

12 Q And it's Brittany Olson that came back in and was  
13 struggling with the bouncer near the end of the  
14 portion?

15 A Correct.

16 Q The bouncer she's struggling with was not Dan  
17 Kersten, he was another person seen on the video?

18 A Correct. Dan was the one standing at the very front  
19 of the video who was scanning the area.

20 Q All right. Thank you.

21 Officer, this is a board that has a number of  
22 displays -- number of images, twelve of them. It's  
23 marked Exhibit 33. And feel free to come off the  
24 stand if you would like, but can you just tell me if  
25 these represent still images from the portion of

1 video that we just watched?

2 A Yes, they are still images.

3 ATTORNEY MAIER: I'd move in Exhibit 33 at  
4 this time.

5 ATTORNEY WEITZ: I think it's already been  
6 moved, Your Honor.

7 THE COURT: I believe 33 was received  
8 through witness Kersten, but -- so we're all set.

9 ATTORNEY MAIER: All right.

10 Q (BY ATTORNEY MAIER) I'll show you what's been marked  
11 as Exhibit 34. Are you able to describe what that  
12 is, Officer?

13 A It's more still shots of the video.

14 Q Are you able to tell -- this is labeled 34. In 34A,  
15 which is the upper left corner, is there a time stamp  
16 on that still image?

17 A There is.

18 Q What is that?

19 A The time.

20 Q Yes?

21 A 1:50:30.

22 Q Okay. And on the lower right, is there a time  
23 stamp?

24 A There is.

25 Q What is the time stamp?

1 A 1:50:34.

2 Q And are these still images that capture a period of  
3 time depicted in the video that you watched that  
4 night?

5 A They are, yes.

6 ATTORNEY MAIER: I would move in Exhibit 34  
7 at this time.

8 THE COURT: Any objection?

9 ATTORNEY WEITZ: No.

10 THE COURT: Exhibit 34 shall be received.

11 Q (BY ATTORNEY MAIER) Exhibit 35 is of similar design.  
12 Can you explain what that is to the jury please?

13 A Has twelve more still shots on it.

14 Q Is there a time stamp on the image on the upper  
15 left?

16 A There is. It's 1:50:34.

17 Q And that's labeled 34A, correct?

18 A Correct.

19 Q On the image labeled 35L in the lower right, can you  
20 tell me what the time stamp is?

21 A 1:52:48.

22 Q And these are, again, still images depicting portions  
23 or, I'm sorry, still shots of the video portion we  
24 just watched?

25 A They are.

1                   ATTORNEY MAIER: I'd move in 35 at this  
2           time.

3                   THE COURT: Any objection?

4                   ATTORNEY WEITZ: No.

5                   THE COURT: 35 will be received.

6    Q       (BY ATTORNEY MAIER) Officer Kuether, what were you  
7           wearing that night?

8    A       I was in a uniform similar to what I have on here  
9           minus the tie as well as a jacket.

10   Q       Can you describe the jacket?

11   A       The jacket is made specifically for a patrol uniform.  
12           It cuts off right around the belly button so it  
13           leaves your tool belt available, and it's two -- it's  
14           one color but it's two fabrics. The top is kind of a  
15           rain resistant nylon or some similar fabric and the  
16           bottom half is like any other felt zip jacket.

17   Q       So it would be maybe a fleece?

18   A       Or fleece. Sorry. Yes. Not felt.

19   Q       Fleece starts, what, at the bottom of your rib cage  
20           maybe?

21   A       It's like basically the shoulder -- like the chest,  
22           basically, up is the, like, water resistant material,  
23           and from, like, maybe the nipple line down is the  
24           fleece.

25   Q       Okay. And I apologize sort of for this. You just

1           had your hands held parallel to the floor. That's --  
2           the dividing line is a horizontal one across your  
3           chest?

4     A     Yes, that's correct.

5     Q     Is it a zipper or snaps up and down?

6     A     It's a zip jacket.

7     Q     And then it has patches and logos and that sort of  
8           thing that say Appleton Police?

9     A     It does.

10    Q     Does it have wording on the back?

11    A     No, it does not, that I recall. It's been a while  
12           since I've worn it.

13    Q     What color is that jacket?

14    A     It's navy blue.

15    Q     All portions?

16    A     The entire jacket.

17    Q     Navy blue similar to what you're wearing, a dark  
18           navy?

19    A     Yes. It would match the uniform.

20                   ATTORNEY MAIER: Officer Kuether and  
21           members of the jury and everyone else, I'm going to  
22           show a portion of what has previously been received  
23           as 31. This is starting at a time stamp of 1:58:05.

24    Q     (BY ATTORNEY MAIER) Officer Kuether, before we  
25           start, do you recognize anyone that's on the screen

1 right now?

2 A Yeah. That's me coming in the door.

3 Q So you're sort of in the process of coming through  
4 the doorway?

5 A Correct.

6 Q And at that time is that your first arrival at Luna  
7 that night?

8 A Yeah. Well, it's my first entrance into Luna but I'd  
9 been there for several minutes on the outside.

10 Q All right. We'll just play a few seconds of this  
11 video.

12 (Video played.)

13 Q (BY ATTORNEY MAIER) We stopped it at 1:58:11 That  
14 shows the jacket you were wearing that night?

15 A It does.

16 Q Officer Kuether, the video we just showed, did it  
17 show you wearing a dark colored jacket?

18 A It does not appear so in the video that it's a dark  
19 jacket.

20 Q How does it appear?

21 A It appears that I have a jacket with dark shoulder  
22 and white sleeves and lower portion of the jacket.

23 Q And that's not accurate, is it?

24 A Not in the least, no.

25 Q Do you have any idea why it would show those -- that



1 image that way instead of maybe blue?

2 A The night vision of the security camera distorts the  
3 color, I would assume.

4 Q And that's something that you've experienced in the  
5 past?

6 A Yes, I've seen that before.

7 Q Okay.

8 ATTORNEY MAIER: I have no further  
9 questions.

10 THE COURT: Defense?

11 ATTORNEY WEITZ: No questions, Your Honor.

12 THE COURT: And, ladies and gentlemen of  
13 the jury, do you have any questions you wish to  
14 submit to this witness?

15 (No response.)

16 THE COURT: Very good.

17 Then, sir, you are excused.

18 I'll turn on the lights.

19 Why don't we take just about a ten-minute break.

20 Please rise for the jury.

21 (The jury was escorted out of the  
22 courtroom.)

23 THE COURT: Okay. Just -- just briefly for  
24 the record, during this early afternoon session we  
25 did have three sidebars.

1           The first sidebar was an objection to the form  
2           of the question made by defense counsel. Counsel  
3           agreed to rephrase, so in essence the court didn't  
4           sustain on it but directions were received.

5           Second of all there was a sidebar to discuss  
6           concerns related to the potential testimony in terms  
7           of what may be objectionable material or not as it  
8           related to Officer Kuether. The parties discussed  
9           that and resolved that amongst themselves.

10          Subsequently, there was an objection made, it  
11          was in particular to the hearsay -- hearsay testimony  
12          of Officer Kuether. The court overruled that,  
13          concluding that that portion of the testimony  
14          constituted an excited utterance.

15          Anything else then until we take a short break,  
16          Attorney Schneider?

17                   ATTORNEY SCHNEIDER: No.

18                   THE COURT: Attorney Vishny?

19                   ATTORNEY VISHNY: Yeah. I have something  
20          anticipatory that we could do either now or right  
21          after the break that regards the next witness's  
22          testimony.

23                   THE COURT: Why don't we do this. We'll  
24          have you come back at about 2:40, maybe a few minutes  
25          after, that's fine, and then we'll take up the issue

1 before the jury comes in.

2 ATTORNEY VISHNY: Thank you.

3 (Court in recess.)

4 THE COURT: State's all ready then?

5 ATTORNEY SCHNEIDER: Yes.

6 THE COURT: Defense all right?

7 ATTORNEY VISHNY: Yes.

8 THE COURT: The gallery has been absolutely  
9 wonderful up to this point. As we get into  
10 testimony, the only thing I would ask is just  
11 continue to exhibit the good judgment that you've had  
12 in terms of controlling emotions and sentiments and  
13 things. And I don't know where everybody falls on  
14 this, but I just want to make sure because we want  
15 the jury to be able to focus on the issues they have.

16 And, again, you've been wonderful up to this  
17 point, it just dawned on me that I should probably  
18 reiterate that. And so that will be the last I -- I  
19 mention of it today.

20 Wendy, if we could bring in the jury.

21 (The jury was escorted into the courtroom.)

22 THE COURT: Please be seated. Is the State  
23 prepared to call its next witness?

24 ATTORNEY SCHNEIDER: We would. We would  
25 call Alyson Blom.

1 THE COURT: If you would please come to the  
2 witness stand, remain standing, we'll swear you in.

3 THE CLERK: Please raise your right hand.  
4 (Oath administered to witness.)

5 THE WITNESS: I do.

6 THE CLERK: Please state your full name and  
7 spell it for the record please.

8 THE WITNESS: Alyson, A-L-Y-S-O-N, Blom,  
9 B-L-O-M.

10 THE COURT: Miss Schneider, your witness.

11 ATTORNEY SCHNEIDER: Thank you.

12 **EXAMINATION OF ALYSON BLOM**

13 **BY ATTORNEY SCHNEIDER:**

14 Q Good afternoon, Miss Blom. Where were you raised?

15 A In Appleton.

16 Q Where are you currently living?

17 A In Milwaukee.

18 Q How long have you lived in Milwaukee?

19 A For about seven years.

20 Q Miss Blom, that mic will slide down a little bit.

21 There you go. Then you don't feel like you always  
22 have to twist to answer.

23 And it was seven years you lived in Milwaukee?

24 A Yes.

25 Q Are you working down there right now?

1 A Yes.

2 Q Do you know an individual named Chong Lee?

3 A Yes.

4 Q And how do you know him?

5 A I was friends with him in Appleton.

6 Q Is the Chong Lee that you knew from being friends  
7 here in Appleton, is he here in the courtroom  
8 today?

9 A Yes.

10 Q Could you identify him by some clothing that he's  
11 wearing please?

12 A He is on my right-hand side in a green button-up  
13 shirt.

14 Q No suit coat?

15 A No suit coat.

16 ATTORNEY SCHNEIDER: I would ask the record  
17 reflect identification.

18 THE COURT: The record shall so reflect.

19 Q (BY ATTORNEY SCHNEIDER) Do you also, Miss Blom, know  
20 some of his family members?

21 A Yes.

22 Q And who do you know?

23 A I know his older brother -- or his brother Tong, his  
24 brother Hu, his brother Paul, and his brother Nhia  
25 and his sisters.

1 Q Is -- in terms of Chong and Paul, who is older?

2 A I think Chong is.

3 Q Did it come time over the last seven years though  
4 even living in Milwaukee that you've come up to  
5 Appleton?

6 A Yes.

7 Q Do you come up on weekends at times?

8 A Yes.

9 Q Is your parents or family still up here?

10 A Yes. My dad is.

11 Q Miss Blom, I want to direct your attention back to  
12 December of 2013, actually Saturday, December 7th  
13 into Sunday, December 8th, 2013. Do you remember  
14 being in Appleton that weekend?

15 A Yes.

16 Q And did you have plans to come up for the whole  
17 weekend or what brought you here?

18 A I -- I just had off of work and so I came home.

19 Q Did you make any plans for Saturday night?

20 A Just to go out.

21 Q And who were those plans with?

22 A I had plans with Xung to go out, and he had picked me  
23 up and we went to City Limit.

24 Q And that's miss -- when you say -- can you spell  
25 Xung?

1     A     X-U-N-G.

2     Q     And that a male or female?

3     A     A male.

4     Q     Do you know his last name?

5     A     Xiong, X-I-O-N-G.

6     Q     Did you have plans to meet up with anyone else?

7     A     Once we got to City Limits, then everybody else had

8           come.

9     Q     And who do you remember?

10    A     I remember Chong, Phong, Michael, Paul and Joe and my

11           friend Dalinda.

12    Q     Okay. Paul. Paul Lee?

13    A     Paul Lee.

14    Q     And Phong?

15    A     Lee.

16    Q     And how is -- is Phong related to Paul or Chong that

17           you know?

18    A     I think they're just related like cousins.

19    Q     And then you said Michael?

20    A     Yes.

21    Q     What was his last name?

22    A     Thor.

23    Q     And you also said Joe?

24    A     And his last name is also Thor.

25    Q     Is there any relation that you know between Joe and

1 Michael?

2 A No.

3 Q And you said your friend Dalinda?

4 A Yes.

5 Q Do you know her last name?

6 A It's Melo, M-E-L-O.

7 Q Was she ever known as Dalinda Guzman?

8 A Yes.

9 Q And all the people you named were at City Limits  
10 then?

11 A Yes.

12 Q Do you remember what time you got there?

13 A No.

14 Q Did you stay at City Limits?

15 A No. We stayed there and then we left to go to Luna  
16 in Appleton.

17 Q If you even know, Miss Blom, did you drive yourself  
18 or what vehicle did you travel in?

19 A No. Dalinda drove myself and Phong.

20 Q Do you remember where you parked?

21 A We parked in the parking lot behind the structure  
22 that's behind Luna Lounge.

23 Q And behind structure, do you mean behind a parking  
24 ramp structure?

25 A Yes.



1 Q Was the plan for any of those other parties to go to  
2 Luna also?

3 A Yes.

4 Q Was it pretty much the whole group was going to go?

5 A Yes.

6 Q I'm going to ask you, Miss Blom, it might seem like  
7 an odd question, do you remember anything about what  
8 you were wearing on this night?

9 A Yes. I was wearing very high boots. They were  
10 gray.

11 Q Below or above your knee did they end, if you  
12 remember?

13 A Above.

14 Q Did they have a high heel on them as well?

15 A Yes.

16 Q Do you remember when you got to Luna did everyone  
17 arrive at the same time?

18 A Dalinda and Michael had went to go get a hot dog or a  
19 brat, but I believe everybody else was with us at the  
20 same time.

21 Q Did you ever stop or go to the establishment known as  
22 Sharks at all?

23 A I don't -- I didn't, no.

24 Q And when you got to Luna, where did you go?

25 A We went through the first bar area down the stairs

1           and we were by the second bar and a table was over  
2           there.

3       Q     Who was with you at that location?

4       A     Myself, Dalinda, Michael, Chong, Phong, Paul and  
5           Joe.

6       Q     Did the group stay together the whole night or did  
7           people -- sorry, did people kind of split off at  
8           times?

9       A     There were sometimes that we were split because at  
10          one point it was just me and Dalinda by our table.

11      Q     Were there times where you were with Chong and  
12          Dalinda?

13      A     Yes.

14      Q     During that time when you're with these people at  
15          Luna, prior to getting ready to leave, was there any  
16          fights or arguments among your group of friends?

17      A     Not within us. The only altercation that I remember  
18          was coming back inside to smoke, the bouncer had told  
19          Phong that he could not come inside because he was  
20          too drunk, but -- and there was a minor altercation,  
21          but then the bouncer had let him back inside and we  
22          all went back inside.

23      Q     And that included Phong being able to go in?

24      A     Yes, Phong was included.

25      Q     I want to direct your attention towards the end of

1 the night, towards bar closing. Where were you in  
2 the bar prior to getting ready to leave?

3 A Me and Dalinda were still downstairs by the table  
4 that we were at by the second bar.

5 Q Was anyone else down there?

6 A Just me and Dalinda.

7 Q And where did you go from there?

8 A We walked up the stairs and towards the first bar.

9 Q Could you see at that point as you were walking up to  
10 that area anyone else with your group that was near  
11 you other than Dalinda?

12 A I saw a group of people. The only person that I  
13 could point out was Paul.

14 Q Okay. Did you know at all at that point where Chong  
15 was?

16 A No.

17 Q And when you said you could see where Paul was, where  
18 in the bar was that?

19 A It wasn't in the bar, it was in the foyer, and I was  
20 still by the bar.

21 Q So just to kind of describe, you're in still what  
22 would be the upper bar, the first bar when you  
23 enter?

24 A Yes.

25 Q And you could see into the foyer area?

1 A Yes.

2 Q What do you remember about the lighting, Miss Blom?

3 A That it was dark.

4 Q Was there anything specific because of the lighting  
5 that you remember seeing Paul?

6 A It reflected -- there was black light and it  
7 reflected off his jacket.

8 Q Could you see who else was near Paul at that time?

9 A No.

10 Q Were there other people near him?

11 A Yes.

12 Q Was it because of the lighting you couldn't see who  
13 else it was or just another reason?

14 A I just don't know.

15 Q As you're walking up to that area, was there anything  
16 that caused you to focus on Paul or the other people  
17 who might have been near him?

18 A No. I was just scanning the area and his jacket  
19 caught my eye.

20 Q Did it -- did he look upset at all?

21 A I don't know.

22 Q Did you continue walking to leave then?

23 A No.

24 Q Okay. So you're still in by the bar?

25 A Yes.

1 Q And then what do you remember next?

2 A I remember seeing a flash and it was just a bright  
3 flash and then I remember running.

4 Q Did the flash surprise you?

5 A Yes, I -- yeah. I thought it was -- it almost looked  
6 like a camera.

7 Q I was just going to ask you that. Has it been your  
8 experience with cell phones that people often take  
9 cell phone photographs when they're out at night?

10 A Yes.

11 Q So you see flashes at times from cell phone flash?

12 A Yes.

13 Q Okay. Was the flash, when it occurred, if you know,  
14 Miss Blom, can you give us any direction, was it in  
15 front, to your right, left?

16 A I can't remember.

17 Q Wasn't behind you obviously?

18 A No, it was not behind me.

19 Q What do you remember doing after you saw the flash?

20 A I remember pushing Dalinda and then running after  
21 her.

22 Q Do you remember seeing anybody else in the immediate  
23 area where you were?

24 A No, just Dalinda in front of me.

25 Q Did you see -- after that flash did you see anything

1           that caught your attention in the foyer area?

2     A     No. I thought there was an alteration (sic) or a  
3           fight, and I thought somebody maybe got hit, but I  
4           didn't know what had happened.

5     Q     Did you ever see anyone on the ground?

6     A     No.

7     Q     Do you remember, Miss Blom -- so you pushed Dalinda  
8           towards the door?

9     A     Yes.

10    Q     What happened as you went through the door?

11    A     As I went through the door, I ran, and when I got  
12          around the corner, I was tackled.

13    Q     If I can ask you, Miss Blom, when you exited did you  
14          go right, left or straight, if you know?

15    A     I went right.

16    Q     And if you know, do you know where the area was you  
17          were tackled in relation to the front door of Luna or  
18          in relation to anything else?

19    A     It was around the corner.

20    Q     Did you actually -- tackle can mean a lot of  
21          different things, but did you actually go down to the  
22          ground?

23    A     I did.

24    Q     What happened then?

25    A     I was getting hit in the face.

1 Q Could you tell anything about the person who was  
2 hitting you?

3 A Just that it was a female.

4 Q Do you remember anything that was said?

5 A There was a lot of the word bitch being said and that  
6 I knew who did it.

7 Q Did you try to defend yourself in some way?

8 A I blocked my face.

9 Q Just going to show you an exhibit that's been marked,  
10 Miss Blom, and I'll let you take a second to get  
11 acquainted. It's Exhibit 6. So College Avenue is at  
12 the end running right to left on the exhibit, there  
13 is an area that's been previously marked as Luna and  
14 Sharks and a building marked PAC. Are you familiar  
15 with that?

16 A Yes.

17 Q And is the area that's marked Luna consistent with  
18 what you know about it being on a corner across from  
19 the PAC?

20 A Yes.

21 Q Where about did the incident occur with the girl  
22 tackling you?

23 A Like right over here.

24 Q Just for the record, the street you were pointing to  
25 is North Division Street, correct?

1 A (Witness nodding.)

2 Q If you even know, Miss Blom, and I don't know that  
3 you know this, was -- were you on the sidewalk, in  
4 the street or do you not even know?

5 A I believe it was the sidewalk.

6 Q Okay. I'm going to give you a red marker, and I know  
7 you may not know exactly, but why don't you draw a  
8 line kind of generally at the top or the bottom of  
9 the area where you think that might have happened.

10 A Like this is the sidewalk?

11 Q Um-hum. Oops. Sorry. Okay. So you drew a red  
12 line?

13 A (Witness nodding.)

14 Q Can you just write over here your last name?

15 A (Witness complying.)

16 Q Okay. Thank you. Do you know how long that  
17 altercation with that other girl took?

18 A No.

19 Q Do you know, Miss Blom, even how it came to end?

20 A There was a male who had stopped it, and he had  
21 picked me up off the ground.

22 Q When you were getting hit, did it surprise you?

23 A Yes.

24 Q Were you struck once or more than once?

25 A More than once.



1 Q Do you remember it hurting?

2 A No.

3 Q After you got up, do you remember any injuries you  
4 had?

5 A My face was bloody.

6 Q Were you upset?

7 A Yes.

8 Q Had you been drinking on this night, Alyson?

9 A Yes.

10 Q Was Chong drinking?

11 A Yes.

12 Q Maybe instead of asking everybody, was there anybody  
13 not drinking?

14 A No.

15 Q The guys that picked you up, did you stay with them,  
16 where did you go at that point?

17 A No. A male picked me up, and I don't know his name,  
18 and he said that he was going to get somebody to help  
19 me, and he walked away and then I proceeded to walk  
20 home.

21 Q Did you talk to the people -- the male that was in  
22 the area at all as best you can recall?

23 A I told him my name, and I just said that I just got  
24 into a fight, and he said he was going to go get  
25 somebody, and I -- when he walked away, then I walked

1 home or started to walk home.

2 Q I'll ask you this, you may or may not know, Miss  
3 Blom. Did he ever give you his name?

4 A I don't know.

5 Q Did you -- where did you ultimately go at that  
6 point?

7 A I walked through the parking structure towards  
8 Superior Street because I walked the opposite way and  
9 then I proceeded to walk towards Oneida Street and  
10 over the Skyline Bridge.

11 Q And ultimately where did you go that -- after that  
12 point?

13 A I was on the Skyline Bridge and a car had stopped  
14 with somebody that I had knew and they drove me to my  
15 father's house.

16 Q And did you stay there?

17 A I did not.

18 Q Where did you go?

19 A Xung had picked me up and we had went to Lisa's  
20 house.

21 Q How did you happen to make contact with Xung?

22 A Once I got home and I had charged my phone, he -- I  
23 don't know who called who.

24 Q Was there a reason you didn't stay at your house?

25 A I'm not sure.

1 Q And what is Lisa's last name?

2 A Stutzman.

3 Q And is there some relationship between Lisa and Chong  
4 that you know of?

5 A Lisa was dating Chong's brother Hu.

6 Q They have children together?

7 A Yes.

8 Q You went to Lisa's home then?

9 A Yes.

10 Q When you -- I'm going to just ask this question this  
11 way. When did you first become aware that there had  
12 been a shooting at Luna? When? Like where were you  
13 when you became aware of that?

14 A I don't know.

15 Q Was there any discussion -- did you mention to  
16 Lisa what happened to you at Luna?

17 A Yes.

18 Q And in some ways, Miss Blom, were you -- were your  
19 injuries apparent?

20 A Yes.

21 Q At some point, though, you learned there had been a  
22 shooting, correct?

23 A Yes.

24 Q You're at Lisa's early morning hours. How long did  
25 you stay there?

1 A I'm not sure.

2 Q Other than seeing Lisa and Xung, who else might have  
3 been at the house?

4 A Her son Caden had been awake because he opened the  
5 door.

6 Q What time do you think it was when you got to Lisa's  
7 house?

8 A It had to be after bar close, I want to say around  
9 three or 3:30.

10 Q Had you had any other plans earlier in the night to  
11 end up at Lisa's?

12 A No.

13 Q Lisa, was she out with the group at all that night?

14 A No.

15 Q When you got to Lisa's, was she awake?

16 A She was awake but she was in bed.

17 Q That day, so now it would be Sunday, Sunday morning,  
18 did you learn there was a shooting on that day?

19 A I learned -- well, I learned there was a shooting  
20 when we were fighting previously because she said  
21 somebody -- somebody had gotten shot, and I knew that  
22 because when I had talked to the male he had said --  
23 I had said somebody got shot. I just don't know  
24 exactly when I was told that.

25 Q Okay.

1 ATTORNEY SCHNEIDER: Give me one second.

2 Q (BY ATTORNEY SCHNEIDER) So when the female is saying  
3 things to you, she said something about shot or  
4 getting shot?

5 A Yes.

6 Q Do you remember what that was?

7 A No, just that somebody got -- somebody was shot or --  
8 and then she said that I had no -- I knew who did  
9 it.

10 Q Later that week did you talk to the police at all?

11 A Yes.

12 Q And where did that happen?

13 A That happened in Milwaukee at my job.

14 Q And is your job located in a mall?

15 A It is. It's at Mayfair Mall.

16 Q Do you remember, Miss Blom, if that was December  
17 11th?

18 A I don't remember the date.

19 Q If I told you the reports indicate that that's the  
20 date, would that seem accurate to you?

21 A Yes.

22 Q Do you remember what time?

23 A It was close to closing so between 8:30 and 8:45.

24 Q Where did you speak to officers?

25 A First I was speaking to them in our back stockroom,

1 but then I needed to close the store so I had asked  
2 them to step out and then I continued the  
3 conversation in the mall.

4 Q Did you tell the officers that you had a conversation  
5 with Lisa after the shooting?

6 A Yes.

7 Q And without saying anything, did you tell them what  
8 you had learned, without saying what you learned, did  
9 you tell them more specifically what Lisa had said?

10 A Yes.

11 Q During that morning when you were at Lisa's house,  
12 how long did you stay?

13 A I'm not sure.

14 Q So you talked about Lisa was there, Xung was there, a  
15 boy named Caden, anyone else arrive while you were  
16 there?

17 A No.

18 Q After seeing the flash in Luna, why did you run  
19 out?

20 A I thought it was a gunshot, but I didn't know, and my  
21 first instinct was to run.

22 Q Were other people near you running?

23 A I don't remember.

24 ATTORNEY SCHNEIDER: One second.

25 Q (BY ATTORNEY SCHNEIDER) Did you know, Alyson, that

1 Luna had a security camera system?

2 A No.

3 Q But since that time you've seen some photos from that  
4 security camera?

5 A Yes.

6 Q Did you recognize any of the people in some of those  
7 photos?

8 A Yes.

9 Q Okay. We'll walk through some of those, but  
10 generally who did you recognize?

11 A I recognized myself, Dalinda.

12 ATTORNEY VISHNY: I need her to speak  
13 louder.

14 A I recognized myself, Dalinda, Chong, Paul, and I  
15 think that's the only pictures that I saw.

16 Q Do you also know someone named Tom Lee?

17 A Yes.

18 Q And is Tom Lee related to Chong?

19 A I don't -- they might be cousins.

20 Q Okay. Do you remember Tom Lee being at Luna?

21 A Yes.

22 Q I'm going to give you a blue marker, Miss Blom, and  
23 I'm going to show you what's been marked State's  
24 Exhibit No. 32. And go ahead and look through, there  
25 are eleven photos here.

1                   Do you recognize yourself in any of the photos?

2           Yeah. Please.

3    A    I'm right here.

4    Q    You're going to have to speak up.

5    A    I'm right here.

6    Q    And you're pointing to someone in the photo 32E?

7    A    Yes.

8    Q    And the door is open, correct?

9    A    Yes.

10   Q    Why don't you on the side write your first name in  
11           the white area and then I'm going to have you  
12           actually draw a line to yourself.

13   A    (Witness complying.)

14   Q    And is there a time stamp on that photograph?

15   A    Yes.

16   Q    What time is that?

17   A    1:12:26.

18   Q    Do you recognize anyone else in that photograph?

19   A    Yes.

20   Q    Who else?

21   A    Chong Lee.

22   Q    Can you write his name on the bottom of the  
23           photograph?

24   A    (Witness complying.)

25   Q    And then can you draw a line to him please?



1 A (Witness complying.)

2 Q Are there any other photos of Chong in this Exhibit  
3 32 that you recognize?

4 A Yes. This one.

5 Q And that would be 32D? Write his name and then draw  
6 a line.

7 A (Witness complying.)

8 Q You mentioned Dalinda was there. Are there any  
9 photographs on this board of Dalinda that you  
10 recognize?

11 A No.

12 Q And she and Michael came in after you?

13 A Yes.

14 Q Is there anyone else that you recognize in any of  
15 these photos?

16 A Yes.

17 Q And who is that?

18 A Phong is right here.

19 Q And that's 32F?

20 A Yes.

21 Q Below him, same thing, can you write Phong and then  
22 draw a line? Sorry. Just not a hard surface. Then  
23 I'll hold it up a little bit.

24 A Paul is right here.

25 Q And that's in 32J?

1 A Yes.

2 Q I'm going to -- just wait one second. Go ahead and  
3 write his name below and then draw a line to him.

4 A Tom is right here. I can tell by his blonde hair.

5 Q Okay. So in 32J to the left of the photograph we see  
6 kind of the back of someone, and you're saying that's  
7 Tom Lee?

8 A (Witness nodding.)

9 Q Why don't you go ahead and write to the side the name  
10 Tom and then draw a line to him.

11 A (Witness complying.) Those are the clearest.

12 Q Okay. Thank you.

13 And the photographs show everyone wearing gray,  
14 white or black or shades of gray clothing. People  
15 had colorful clothing on that night, correct? I mean  
16 it wasn't all just black and gray or white as we're  
17 seeing?

18 A Yeah.

19 Q Meaning the colors on here aren't accurate?

20 A (Witness nodding.)

21 Q You said your boots were gray?

22 A Yes.

23 Q And in the photograph of you, what color does it  
24 appear your boots are?

25 A White.

1 Q Okay. I'm going to show you a board that's marked  
2 33, and there are twelve photographs on this board.  
3 Go ahead and take your time, Miss Blom, and see if  
4 you recognize anyone in any of the photographs.

5 A This is Dalinda.

6 Q That's in 33H?

7 A Yes.

8 Q Okay. You want to write her name below and then draw  
9 a line like as you've been doing?

10 A (Witness complying.) This is Dalinda.

11 Q 33L? Go ahead and draw a line again.

12 A (Witness complying.) This is Phong.

13 Q And that's in 33L again.

14 A This is Dalinda.

15 Q 33K?

16 A That's Phong.

17 Q If you can write his name again. And that's again in  
18 33K?

19 ATTORNEY VISHNY: I'm sorry. What's in  
20 33K?

21 ATTORNEY SCHNEIDER: 33K is Phong and she's  
22 marked Dalinda.

23 ATTORNEY VISHNY: Okay.

24 A This is also Dalinda.

25 Q So we see her in several pictures. Why don't you

1           just put a D. I think she's the only person with the  
2           name D. That makes it easier for you.

3     A     That's also her.

4     Q     I'm going to show you another photo board. This one  
5           is marked 34. Do you recognize anyone in these  
6           photos?

7     A     Yes. This is Dalinda. Do I have to mark them all?

8     Q     Yeah, why don't you, if you don't mind.

9     A     This is Tom.

10    Q     And the first D you put was in 34A?

11    A     Yes.

12    Q     Why don't you write Tom's name then in 34B. Okay.

13    A     This is Dalinda.

14    Q     A D again would suffice in 34D -- or 34B. I'm sorry.

15    A     Again, this is Tom, that's Dalinda.

16    Q     Okay. Do you want to just mark a T and a D, that  
17           would be --

18    A     (Witness complying.)

19    Q     And that was in 34C.

20    A     This is Dalinda, this is Tom and this is Chong.

21    Q     Okay. So you can mark T and D.

22    A     (Witness complying.)

23    Q     And then can you write the name Chong on this one  
24           please? And that's in 34D?

25    A     Yes.

1 Q Okay.

2 A This is Dalinda, this is Tom, this is Chong.

3 Q 34E, that was the photograph?

4 A Yes.

5 Q So if you want to do D --

6 A (Witness complying.)

7 Q -- T and C would suffice for Chong.

8 A (Witness complying.) This is Dalinda, this is Tom,

9 this is Chong.

10 Q Okay. If you can mark those in 34F?

11 A (Witness complying.)

12 Q Continuing in 34G.

13 A This is Tom, this is Chong, this is me.

14 Q Okay. So why don't we do a D for -- I mean a T,

15 sorry, for Tom, a C for Chong, and then because this

16 is the first time, can you write your full name?

17 A (Witness complying.)

18 Q That was in 34G?

19 A (Witness nodding.)

20 Q Continuing in 34H?

21 A This is Tom, this is Chong, this is me.

22 Q So now you can just use first letters?

23 A (Witness complying.)

24 Q 34H that photograph was. 34I?

25 A This is Tom, this is Chong, this is me.

1 Q You can just do the T, C and A again.

2 A (Witness complying.)

3 Q And then in 34J?

4 A This is Tom, this is Chong, this is me.

5 Q Again, T, C and A.

6 A (Witness complying.)

7 Q And then that was in 34J. 34K?

8 A This is me.

9 Q Okay.

10 A That's Chong.

11 Q Okay. And --

12 A And Tom.

13 Q And then that was in 34L. Can you make out

14 anybody?

15 A No. I know -- I know that's me because of my

16 boots.

17 Q Okay. Why don't you just put an A there and draw it

18 to the boot, Alyson.

19 A (Witness complying.)

20 Q Thank you.

21 And then is a board marked 35. Just see if you

22 recognize any of the people in these photographs.

23 A This is Phong.

24 Q You think that's Phong?

25 A I think so, with his hat.

1 Q Phong had a hat on that night?

2 A (Witness nodding.)

3 Q Okay. If you think it's Phong, go ahead and write  
4 his name either on 35H or 35G?

5 And then a P is fine.

6 A (Witness complying.)

7 ATTORNEY VISHNY: I'm just going to step  
8 over so I can see the pictures.

9 THE COURT: That's fine.

10 A And that's all that I can see.

11 Q I'm going to ask you to look at 35B again. Do you  
12 recognize anyone else in that photograph?

13 A I just see my shoe.

14 Q Okay. So your boot again?

15 A Yup.

16 Q There is -- that's okay. Why don't you just draw an  
17 A and write it to your boot again, Alyson.

18 A (Witness complying.)

19 Q And I've had you make all these markings with a blue  
20 marker, correct?

21 A Yes.

22 Q And it -- to your recollection, this is the best  
23 recollection of who was where in these photographs,  
24 correct?

25 A Yes.

1 Q Okay. You can grab a seat then, Miss Blom.

2 After leaving the bar you went to -- went home,  
3 went to Lisa's. Did you have any contact with Chong  
4 after that?

5 A With Chong?

6 Q Correct.

7 ATTORNEY VISHNY: Judge, I'd like to  
8 approach the bench.

9 THE COURT: You may.

10 (A bench conference was held.)

11 Q (BY ATTORNEY SCHNEIDER) Miss Blom, after this -- it  
12 seems like a silly question for most people these  
13 days. Back in December of 2013 did you own a cell  
14 phone?

15 A Yes.

16 Q Was Chong's number in your cell phone?

17 A Yes.

18 Q So if your phone would receive a call from Chong's  
19 phone, would that show up by the same name?

20 A Yes, it would have showed up as Chong.

21 Q So after this night and after you leave Luna, did it  
22 ever appear that there were calls being placed from  
23 Chong's phone to your phone?

24 A Not until Sunday morning.

25 Q Okay. Was there one or more than one call?



1 A There was more than one.

2 Q Did you answer any of the calls?

3 A No.

4 Q And by Sunday morning, you mean like later that same  
5 day after you had been at Lisa's?

6 A Yes.

7 Q After that morning, did you ever make any calls back  
8 to his phone?

9 A I didn't call him.

10 Q Okay.

11 ATTORNEY SCHNEIDER: I don't have any other  
12 questions then.

13 THE COURT: And whoever from the defense is  
14 covering the questioning, whenever you're ready.

15 **EXAMINATION OF ALYSON BLOM**

16 **BY ATTORNEY VISHNY:**

17 Q Miss Blom, you didn't see the actual shooting,  
18 right?

19 A Correct.

20 Q So you didn't see who -- when I say you didn't see  
21 the actual shooting, what you saw was a flash from a  
22 gun --

23 A Yes.

24 Q -- correct? But you didn't see who was holding the  
25 gun or who did the shooting?

1 A Correct.

2 Q And no matter how many times somebody would ask you  
3 have you seen this, there's no way you could tell  
4 them because you simply didn't see it.

5 A Correct.

6 Q When the police came to your job at Mayfair Mall on  
7 the few days later, what has been described as  
8 December 11th, they talked to you for quite a period  
9 of time, right?

10 A Yes.

11 Q And at that time you drew a map?

12 A Yes.

13 Q Okay. I'm showing you -- I don't think this was  
14 marked, actually.

15 ATTORNEY SCHNEIDER: And actually, here --

16 ATTORNEY VISHNY: You have one that's  
17 marked?

18 ATTORNEY SCHNEIDER: Do you want me to just  
19 highlight her name?

20 ATTORNEY VISHNY: Yeah. It was highlighted  
21 on this. Why don't we use that one then.

22 Q (BY ATTORNEY VISHNY) So I'm going to go back -- I'm  
23 sorry for the little technical glitch here. I'm  
24 going back to showing you again this diagram. This  
25 looks familiar to you, right?

1 A Yes.

2 Q All right. And when the police came, they showed you  
3 that diagram and had you mark things on it, right?

4 A Yes.

5 Q Did you mark things on it or did they write things on  
6 it?

7 A We both did.

8 Q All right. So this particular diagram, and it's -  
9 for the record it's marked as Exhibit No. 99 - and  
10 you recognize this and the fact that your name is on  
11 the diagram, right?

12 A Yes.

13 Q Okay. So looking at this diagram, if you -- I'm  
14 going to move it out for a minute. If you look at  
15 it, this is a rough drawing of Luna, it's not to  
16 scale at all, right?

17 A Correct.

18 Q And when the police talked to you, they were asking  
19 you to show yourself leaving at the time, right?

20 A No, they were asking me to show what -- what I saw  
21 when I recognized Paul's jacket.

22 Q Okay. So when you recognized Paul's jacket, there is  
23 a mark down here. What's that?

24 A That's where me and Dalinda were standing.

25 Q Okay. And over here where it says Paul?

1 A That's where Paul was standing.

2 Q And right next to there, that's the word flash or  
3 what word is that?

4 A I don't know.

5 Q You want to come down and take a look where you might  
6 be able to see it a little better?

7 A (Witness complying.)

8 Q I'm sorry. It doesn't say flash. Why don't you take  
9 a look just so you can see it yourself. It says  
10 bright light?

11 A Okay.

12 Q Is that right?

13 A Yeah. Because there was a bright light in front of  
14 me somewhere. I can't tell you where.

15 Q Okay. You can have a seat again.

16 ATTORNEY SCHNEIDER: I don't know that that  
17 was --

18 Q (BY ATTORNEY VISHNY) Miss Blom, you said there was a  
19 bright light in front of you somewhere but you can't  
20 tell where?

21 A I can't -- I can't give the exact description, but  
22 going back to what you said, it was not behind me.

23 Q Okay. But when you wrote bright light on this, you  
24 were talking about the flash that you saw from the  
25 gun, correct?

1 A Yes.

2 Q So at the time when you talked to the police about  
3 three, four days after this happened, this is where  
4 you put the bright light?

5 A Yes.

6 Q And you put it pretty close to where Paul was,  
7 right?

8 A Yes.

9 Q And that's the only person that you saw?

10 A Yes.

11 Q All right.

12 ATTORNEY VISHNY: I'm going to move Exhibit  
13 99 into evidence.

14 THE COURT: Any objection?

15 ATTORNEY SCHNEIDER: No.

16 THE COURT: 99 will be received.

17 ATTORNEY VISHNY: How do I shut this off  
18 again? Oh, there? Okay.

19 Q (BY ATTORNEY VISHNY) Now, as far as Chong Lee goes,  
20 you know, you didn't like particularly go to Luna  
21 with him that night, he was just part of a crowd that  
22 you were going out with, right?

23 A Yes. We were all together before and then we were  
24 all together there.

25 Q And certainly he's not anybody you've ever dated,

1 right?

2 A No.

3 Q You dated Xung at some time in the past?

4 A Yes.

5 Q Xung, X-U-N-G, who we were talking about earlier,  
6 right?

7 A Yes.

8 Q You weren't dating him at that time, he had a  
9 different girlfriend by then, right?

10 A Correct.

11 Q And when you drove over from City Limits to Luna, you  
12 went in a car with Phong and Dalinda?

13 A Yes.

14 Q Not with Chong?

15 A Yes.

16 Q And if Chong was a part of a group or if there were  
17 other people who went to Sharks, you weren't part of  
18 that group of people, right?

19 A Right.

20 Q So you and this particular group of people, you're  
21 kind of more loosely related in terms of going over  
22 to Luna to have a fun time together, right?

23 A Can you repeat or --

24 Q Well, you're together as a group but it's not like  
25 you made specific plans with Chong or Paul or with

1 people, your plans were Xung and then other people  
2 got together with you guys, right?

3 A Yes. We all planned to go to Luna though.

4 Q Okay. And Chong was a friend of yours at the time,  
5 right?

6 A Yes.

7 Q As were the other people at the time.

8 A Yes.

9 Q After the shooting happened, you haven't talked to  
10 any of the people who were there since then except  
11 for Dalinda, correct?

12 A No. I've talked to -- directly after the shooting,  
13 no.

14 Q Directly after the shooting. You have talked to  
15 Dalinda directly since the shooting, right?

16 A Yes.

17 Q But you didn't talk directly, you've never talked  
18 directly to any of the other people who were there,  
19 right?

20 A In --

21 Q Since the shooting.

22 A From now until the shooting?

23 Q Well, between let's say after the shooting to when  
24 you talked to the police, you didn't directly talk to  
25 people then.

1 A I spoke to Lisa on the phone.

2 Q Lisa wasn't there, right?

3 A Right.

4 Q Lisa Stutzman is not -- you know her as the  
5 girlfriend of one of Chong's brothers, right?

6 A Yes.

7 Q And neither Lisa nor her boyfriend, whose name is Hu,  
8 H-U, were at Luna that night, right?

9 A Correct.

10 Q And so would not have any personal knowledge of what  
11 occurred, right, they weren't there to witness  
12 anything?

13 A They were not there.

14 Q Okay. So you -- so my question, if I understand it,  
15 is you have not talked to anybody who was directly  
16 there.

17 A Right.

18 Q Okay. So, now, it was dark in Luna but you could  
19 still see because you got used to the low lighting  
20 there.

21 A Yes.

22 Q All right. So it's not like walking -- you know how  
23 you walk from bright sunlight into a dark room and  
24 you can't see squat, you know what I mean?

25 A Yes.



1 Q It wasn't like that?

2 A No.

3 Q Your eyes were adjusted to what was going on?

4 A Yes.

5 Q Now, when -- so you really didn't see a fight, per  
6 se, right?

7 A No.

8 Q Okay. Now, when this happened and the guy got hit,  
9 you saw the bright light, everything happened super  
10 fast at that point.

11 A Yes.

12 Q And you're just focusing on getting out of there,  
13 right?

14 A Yes.

15 Q So you don't remember who was right in front of you  
16 right at the time of the bright light, right?

17 A Correct.

18 Q And you couldn't tell the police that, right?

19 A No. The only person I remember being in front of me  
20 was Dalinda.

21 Q Okay. And -- so whatever you've seen in these  
22 pictures is just what the pictures show, not your own  
23 independent memory?

24 A Correct.

25 Q Chong Lee was not wearing a white coat that night,

1 right? Do you remember?

2 A I remember him wearing black sleeves. I don't know  
3 what color his coat was.

4 Q A black center and dark sleeves, does that ring a  
5 bell?

6 A Yeah. It was dark sleeves, but I don't know what the  
7 center was.

8 Q So you just don't recall anymore at this time?

9 A Right. Just the dark sleeves.

10 Q Now, when you talked to Dalinda at one point, Dalinda  
11 Guzman -- was her name Guzman or Melo at the time?

12 A It is both combined, sometimes she goes by both of  
13 them.

14 Q So she has a hyphenated name?

15 A Yes.

16 Q So when Miss Melo-Guzman called you, you actually  
17 talked to her and she was asking you some questions,  
18 right?

19 A Yes.

20 Q And were you aware that she called you and that the  
21 police were actually listening in on the phone?

22 A No.

23 Q That's something you became aware of later?

24 A Yes.

25 Q All right. So a call is placed to you by Dalinda and

1 she sounds pretty upset, right?

2 A Yes.

3 Q And she is asking you for some help to find out who  
4 the shooter is, right?

5 A Yes.

6 Q And she's telling you, look, I need you to find out  
7 because the police are putting pressure on her and  
8 she might lose her job and that's why she's pleading  
9 with you to try to find out, correct?

10 A Yes.

11 Q And when she tells you the police are putting  
12 pressure on her and potentially threatening that she  
13 could lose her job, you said, look, I don't know who  
14 did it, right?

15 A Yes.

16 Q And I don't want to find out who did it, right?

17 A Yes.

18 Q And that you hadn't talked to any of the people who  
19 had been there, right?

20 A Yes.

21 Q And that was all true, you hadn't talked to any of  
22 the people who were there?

23 A Yes.

24 Q And she kept kind of begging and pleading with you on  
25 this phone call, but there was nothing you could

1           really do to help her because you didn't want to get  
2           anymore involved, you just wanted to stay away from  
3           the whole thing?

4     A     Correct.

5     Q     Now, of course, despite your desire to never be  
6           involved, the police came to talk to you, right?

7     A     Yes.

8     Q     And is it fair to say that when police detectives  
9           came to you, it wasn't a real surprise to you,  
10          right?

11    A     Right.

12    Q     In fact, you had told Dalinda on the phone, look, I'm  
13          sure they're going to come talk to me, right?

14    A     I don't remember saying that but --

15    Q     All right. I'll come back to that.

16    A     Okay.

17    Q     But you certainly weren't trying to avoid talking to  
18          the police when they came to see you, right?

19    A     No.

20    Q     Or -- and you were trying to be cooperative when they  
21          came.

22    A     Yes.

23    Q     And do you remember the names of the police who came  
24          to talk to you at all?

25    A     No. I have their cards but I don't remember their

1 names.

2 Q Does the name Sergeant Meyer, does that ring a  
3 bell?

4 A I have -- I have no idea what -- no idea who it  
5 was.

6 Q Okay. Or Sergeant Tauber, you don't remember that  
7 name?

8 A No, I don't remember their names.

9 Q All right. So I'm just going to show you --

10 ATTORNEY VISHNY: I'm going to get this  
11 marked. I'm not going to be moving this into  
12 evidence, but I'm going to get it marked for now.

13 Q (BY ATTORNEY VISHNY) Okay. I'm going to show you,  
14 this has been marked as Exhibit No. 1 (sic). Okay?  
15 And I'm just going to show it to you, and I'm just  
16 going to state for the record that this has been  
17 stipulated by the defense and the State that this is  
18 a transcript, maybe not a hundred percent accurate,  
19 but a transcript of your discussion with the police  
20 when they came and questioned you at Mayfair Mall.

21 A Okay.

22 Q And you can see the names Q and Q1 on that?

23 A Um-hum.

24 Q And the A. The A is you, right?

25 A Okay.

1 Q What are the names of Q and Q1?

2 A Q is Sergeant Tauber and Q1 is Sergeant Meyer.

3 Q Does that refresh your memory at all about names of  
4 the people who came to talk to you? And if the  
5 answer is no, it's no.

6 A No.

7 Q Okay. Thanks.

8 Now, when the police came to talk to you about  
9 what happened, you told them exactly what you knew,  
10 right?

11 A Yes.

12 Q You told them really the exact same things that you  
13 have testified to under oath here today.

14 A Yes.

15 Q And -- but the police weren't believing you when you  
16 told them that, were they?

17 ATTORNEY SCHNEIDER: Objection. Calls for  
18 speculation.

19 Q (BY ATTORNEY VISHNY) You felt -- I'll rephrase this.  
20 You felt the police were not accepting what you  
21 had to say, right?

22 A Sometimes.

23 Q Okay. They were putting a lot of pressure on you to  
24 try to change what you had to say?

25 ATTORNEY SCHNEIDER: I'm going to object.

1           That calls for speculation.

2                       ATTORNEY VISHNY: I will rephrase the  
3           question.

4                       THE COURT: Go ahead.

5    Q    (BY ATTORNEY VISHNY) Did you feel at times that they  
6           were putting a lot of pressure on you to change what  
7           you had to say?

8    A    Maybe not to change but they weren't necessarily  
9           accepting of my answer.

10   Q    Okay. Do you remember being told by the police --  
11           well I'm going to show you Page 10. This -- just so  
12           you know, Page 10, so it's pretty early in your  
13           interview. I can bring it back if you need me to  
14           bring earlier pages. All right? Do you remember  
15           fairly early in the interview being asked by either  
16           Tauber or Meyer when you saw the gun? Do you  
17           remember saying that?

18   A    Yes.

19   Q    Them saying that, I'm sorry. And you said, because I  
20           didn't, I didn't see the gun at all. I never saw a  
21           gun, I just saw the flash.

22   A    Yes, I remember saying that.

23   Q    And that it looked like a white light?

24   A    Yes.

25   Q    And they asked you some questions about whether or

1 not you saw a fight, right?

2 A Yes.

3 Q And you told them you didn't really see a fight?

4 A Yes.

5 Q The only person you remembered was Paul, right?

6 A Yes.

7 Q And you remember them asking you whether or not the  
8 woman who beat you up was saying you know who did it  
9 and telling them -- you were telling that woman I  
10 don't know who did it, right?

11 A Yes.

12 Q Does that help remind you at all, did that -- when  
13 that woman said to you, you know who did it, were you  
14 telling her, look, I don't know who did it?

15 A I just remember saying I don't know and putting my  
16 hands over my face.

17 Q Okay. But when you talked to the police, they asked  
18 you this question, do you remember what the girl was  
19 saying that grabbed you and jumped you, and you said,  
20 I was like, no, I don't, I don't know who did it?

21 A Yes.

22 ATTORNEY SCHNEIDER: What page was that  
23 please?

24 ATTORNEY VISHNY: I'm sorry. Page 14.

25 Q (BY ATTORNEY VISHNY) All right.



1           Now, do you remember the police early in the  
2           interview after explaining that you and -- what was  
3           going on with Dalinda, saying to you that they wanted  
4           to help you out as much as they could with the whole  
5           situation?

6     A     Yes.

7     Q     And that you were probably scared. Do you recall  
8           that?

9     A     Yes.

10    Q     And telling you they had exactly on video where you  
11          were standing?

12    A     Yes.

13    Q     And that -- what you interpreted that to mean was  
14          that they had you on video exactly where you were  
15          standing when the shot went off, right?

16    A     Yes.

17    Q     Page 12, 531. Do you recall the police officer  
18          saying, so I don't want to jam you up with any of  
19          that stuff?

20    A     I don't remember that.

21    Q     You don't remember it. Okay.

22           I'm going to show you again, this will be Page  
23          12, Exhibit 100, see if that helps refresh your  
24          memory of the police saying this.

25    A     (Witness reading.)

1 Q No, you don't have to read it out loud, just read it  
2 to help refresh your memory.

3 A I remember them saying that they had the video, I  
4 don't remember the jam you up.

5 Q What they said is that they needed your help,  
6 right?

7 A Yes.

8 Q And they said, I need you to be a hundred percent  
9 honest with me, I will walk you through the whole  
10 entire thing, like, whatever you tell me has to be  
11 100 percent, you have to tell me 100 percent, excuse  
12 me, those are the exact words. And you said okay?

13 ATTORNEY SCHNEIDER: What page again?

14 ATTORNEY VISHNY: 12. Line 527 is where  
15 I'm going next.

16 Q (BY ATTORNEY VISHNY) Do you remember that's what was  
17 said? Even if you don't remember it, it's okay that  
18 you don't remember, we're just going to go over what  
19 it is.

20 And then he said, okay, because I have on video  
21 exactly where you're standing, and then there is  
22 something that can't be heard on the tape, right?

23 A Um-hum.

24 Q That's what it says, right?

25 A Yes.

1 Q And you say okay, right?

2 A Yes.

3 Q And the police officer or detective says, so I don't  
4 want to jam you up with any of that stuff, correct?

5 A Correct.

6 Q And then you tell him you're honestly telling him to  
7 the best of your knowledge, right?

8 A Yes.

9 Q And it continues on and you're telling him that and  
10 he's urging you to try to remember and you keep  
11 telling him again and again you don't really  
12 remember, correct?

13 A Yes.

14 ATTORNEY VISHNY: Page 15.

15 Q (BY ATTORNEY VISHNY) Now I'm going back to Exhibit  
16 100, Page 15. Starting at line 641. If you want to  
17 just read that and remind -- see if that reminds you  
18 of the police conversation.

19 Does that remind you at all?

20 A Yes, a little.

21 Q And so the police officer is saying to you, you have  
22 to have said something to somebody about what  
23 happened, words to that effect, correct?

24 A Yes.

25 Q And they tell you, look, a lot of people's lives are

1 at risk right now, right?

2 A Yes.

3 Q And then they say to you, because I don't think, and  
4 correct me if I'm wrong, I don't think you told  
5 anybody kill someone.

6 A Right.

7 Q And they say, okay, I don't think you're that kind of  
8 person, I don't think you'd tell them you need to  
9 shoot that person or anything. Right?

10 A Right.

11 Q So when they are saying that to you, do you have a  
12 memory of that now, of them talking to you like  
13 that?

14 A Yeah.

15 Q Suggesting that you could be part of some kind of  
16 conspiracy to kill somebody?

17 A Yes.

18 Q And you felt pressured when they were saying things  
19 like that to you, right?

20 A Yes.

21 Q Your interpretation was they were trying to infer  
22 that somehow you were part of a murder, right?

23 A Yes.

24 Q And it got to the point as they questioned you over  
25 and over, and you kept telling them I didn't see

1           this, right?

2     A     Yes.

3     Q     And it even got to the point where you felt so  
4           horrible about how they were questioning you that you  
5           started crying?

6                   ATTORNEY SCHNEIDER:  Objection to  
7           "horrible".  She can ask her how she feels, but I  
8           think that is a mischaracterization until it comes  
9           from the witness.

10                   ATTORNEY VISHNY:  I will change -- I  
11           will --

12                   THE COURT:  I'll order that the word  
13           horrible be stricken.  Please rephrase.

14     Q     (BY ATTORNEY VISHNY)  So you were feeling some  
15           emotion to the point where you started crying,  
16           right?

17     A     Yes.

18     Q     What emotion was that?

19     A     I was frustrated.

20     Q     And is it fair to say that the reason you were  
21           frustrated was because you were telling the truth and  
22           the police were acting like they didn't believe  
23           you?

24     A     Yes.

25     Q     Is it fair to say that it seemed that they were

1           trying to imply if you didn't tell them who did it,  
2           you must be a part of the whole thing?

3     A     Yes.

4     Q     Now, you said that you talked to Lisa, or you went  
5           over to Lisa Stutzman's house that night, correct?

6     A     Yes.

7     Q     And when you went there, you told her that evening  
8           that you thought Paul Lee had done the shooting.

9     A     I don't -- do you have it written?

10    Q     Yes. I'm showing you again Exhibit 100. If you need  
11       me to bring a prior page to orientate yourself, I  
12       will, but just take a look real quickly.

13    A     This sentence right here.

14    Q     All right. And this is again a transcript of you  
15       talking to the police, right?

16    A     Yes. I remember saying that.

17    Q     And you told the police that when you went to Lisa's  
18       house that night, you remembered saying I think Paul  
19       did it?

20    A     Yes.

21    Q     And because you said that -- because that's what you  
22       were thinking at the time?

23    A     Yes.

24                   ATTORNEY VISHNY: I don't have any further  
25       questions at this time.

1 THE COURT: Any redirect, Attorney  
2 Schneider?

3 ATTORNEY SCHNEIDER: Yes.

4 **EXAMINATION OF ALYSON BLOM**

5 **BY ATTORNEY SCHNEIDER:**

6 Q Okay. The only person you remember recognizing in  
7 that area when you saw the flash was Paul, correct?

8 A Yes.

9 Q Is that why you said to Lisa, I think Paul did it?

10 A That would make sense.

11 Q You didn't -- you couldn't recognize where anyone --  
12 who anyone else was?

13 A Correct.

14 Q You didn't know where Chong was at the time?

15 A Correct.

16 Q So that's the -- that's the only reason why you said  
17 to her I think Paul did it because you remember --

18 ATTORNEY VISHNY: Objection. Leading.

19 THE COURT: Please rephrase.

20 Q (BY ATTORNEY SCHNEIDER) What was the reason you told  
21 her that you thought Paul did it?

22 A Because he was the only person that I saw.

23 Q That you recognized?

24 A That I recognized in the group.

25 Q But there were other bodies there, you just didn't

1           really pay attention?

2     A     Yes.

3     Q     The people in the area where you saw Paul, were they  
4           staying still or moving?

5     A     I don't remember. I remember them standing still.

6     Q     And during cross the phone call with Dalinda was  
7           referenced and she asked for your help, correct?

8     A     Yes.

9     Q     Do you remember how you responded?

10    A     No.

11    Q     Do you ever remember telling her you were scared to  
12          find out?

13    A     I remember saying something about how I didn't want  
14          to know, and I do remember telling her to tell her --  
15          to just say what had happened if she knew.

16    Q     And, Miss Blom, it's fair to say that you really  
17          didn't want to become involved or talk with the  
18          police.

19    A     Correct.

20    Q     And you didn't really want to find out who did  
21          this?

22    A     Correct.

23    Q     Why was that?

24    A     Because I could have possibly knew the person and I  
25          didn't want to know.



1 Q Do you remember when the police came to talk to you  
2 on December 11th, did they tell you why they were  
3 there?

4 A Yes, they said regarding the incident that had  
5 happened at Luna.

6 Q And do you remember if you initially told them that  
7 you were at Luna?

8 A Yes. I told them later, I don't remember how the  
9 conversation played out though, but I did say that I  
10 was there.

11 Q Do you remember initially telling them that you saw  
12 it on the papers?

13 A Well I did see it in the paper, yes.

14 Q I want to go back to something that you stated. When  
15 you talked to the police, you drew the drawing that  
16 we had seen, Exhibit 99, correct?

17 A Yes.

18 Q And your testimony here today is that you remember  
19 the light being somewhere in front of you?

20 A Yes.

21 Q Do you remember telling them the light could have  
22 been on the right side of you as you were walking  
23 out?

24 A I don't remember.

25 Q And your testimony today is it's somewhere in front

1 of you, but you can't give any distance to that?

2 A I can't. I can't give any direction of where it was.  
3 I just know that it was in front of me.

4 Q And by in front of you, do you mean, Miss Blom, like  
5 not directly in front of you but somewhere in your  
6 range of vision in front?

7 A Yes. If you could go like this, like --

8 Q Kind of at an angle out from your eyes?

9 A Yes.

10 Q Miss Blom, this is again the copy of the transcript,  
11 your name is on there, date is December 11th, 2013?

12 A Yes.

13 Q I want to direct your attention to Page 10.

14 On cross you were asked questions, and I think  
15 if you look at 432 you were asked a question because  
16 the officer said to you: When did you see the gun.

17 A Yes.

18 Q And your answer was, like I didn't see a gun.

19 A Correct.

20 Q I want you to look up at line 417, same page. That's  
21 an answer you provided, correct?

22 A Yes.

23 Q Can you read that answer please?

24 A And I ran out -- I -- well, she ran first because I  
25 don't know. Immediately I was just like, oh, my God.

1 Gun. Like, go.

2 Q So you mention in that answer to them, gun?

3 A Yes.

4 Q And then in follow-up, the officer asked you when did  
5 you see a gun?

6 A Yes.

7 Q And when you talked with the officers, did you  
8 describe knowing Chong and Paul and his family?

9 A Yes.

10 ATTORNEY SCHNEIDER: I don't have any other  
11 questions.

12 ATTORNEY VISHNY: Very brief recross.

13 THE COURT: Very good. Thank you.

14 **EXAMINATION OF ALYSON BLOM**

15 **BY ATTORNEY VISHNY:**

16 Q So when the police officer -- when you were saying  
17 oh, my God, gun, you were referring to the reaction  
18 that what you heard was -- and the light and putting  
19 together was a gunshot, right?

20 A Yes.

21 Q Never because you actually saw a gun?

22 A I didn't see it. I -- that was what was going on in  
23 my head when I was explaining that to them.

24 Q Okay. And if I get this correctly -- by the way, you  
25 were shown a police report before coming to court

1           today written by an officer that is kind of a summary  
2           of what you said to help remind you, right?

3     A     Yes.

4     Q     But you were never given a copy of your actual tape  
5           recording before you were called by the State to go  
6           over that, right?

7     A     Correct.

8     Q     And you were never shown a transcript of what you had  
9           said?

10    A     Correct.

11    Q     Okay. Now, the very last thing I want to say is when  
12           you remember this flash and the people around you,  
13           what you remember right at that time is they were  
14           standing still, right?

15    A     Yes.

16    Q     Just like you were standing still, right?

17    A     Yes.

18    Q     Because everybody froze for a second, right, you  
19           froze for a second when you heard this?

20    A     I don't know.

21    Q     You're not sure. But whatever you did, you then ran  
22           out?

23    A     Yes.

24                   ATTORNEY VISHNY: Nothing further.

25                   THE COURT: Attorney Schneider, does that

1 prompt any clarification questions?

2 ATTORNEY SCHNEIDER: Just one second. No.

3 THE COURT: Ladies and gentlemen of the  
4 jury, do you have any questions you wish to submit  
5 for consideration?

6 (No response.)

7 THE COURT: Very good.

8 Miss Blom, thank you very much. You are  
9 excused.

10 If I could get the attorneys to come up for just  
11 a second.

12 (Bench conference.)

13 THE COURT: Ladies and gentlemen, we were  
14 -- I was figuring out where we are witness-wise. We  
15 are going to have another witness, but what I'd like  
16 to do is complete that witness today, and -- I don't  
17 expect that it will -- we'll be done before 6:00 is  
18 what I'm greatly expecting, and it may be well in  
19 advance of that, but why don't we take a restroom  
20 break now, take five minutes, and that way we can get  
21 into the witness, we don't have to take a break, and  
22 then we'll be able to get you on your way.

23 If you could please rise for the jury.

24 (The jury was escorted out of the  
25 courtroom.)

1                   THE COURT: And just briefly, during Miss  
2                   Blom's testimony we did have a single sidebar related  
3                   to certain telephone calls. It was agreed that it  
4                   would be recognized that the telephone calls came  
5                   from a number belonging to Mr. Lee but that would be,  
6                   by and large, the extent of --

7                   ATTORNEY VISHNY: I just want to clarify  
8                   something about the record. I used the transcripts  
9                   for purposes of refreshing recollection and read  
10                  things into the record. Does that mean I need to  
11                  provide a copy of this transcript to the court?  
12                  Because these have my notes all over it so I don't  
13                  want to do that.

14                  ATTORNEY SCHNEIDER: We probably have a  
15                  clean copy if you want.

16                  THE COURT: I would expect --

17                  ATTORNEY VISHNY: I wasn't going to move  
18                  this in because it's really not an exhibit.

19                  ATTORNEY SCHNEIDER: Our clerk has a weird  
20                  rule about it though.

21                  THE COURT: Attorney Vishny, we were just  
22                  talking, if it's being simply used to refresh  
23                  recollection, we won't mark it as an exhibit.

24                  ATTORNEY VISHNY: Her recollection was  
25                  exhausted, and I read from it, you know, I mean

1           there --

2                   THE COURT:   Let's get a clean copy then.

3                   ATTORNEY VISHNY:   All right.

4                   THE COURT:   Okay.   All right.   So about  
5           five minutes.

6                   ATTORNEY SCHNEIDER:   Thank you.

7                   (Court in recess.)

8                   (The jury was escorted into the courtroom.)

9                   THE COURT:   Attorney Schneider, are you  
10          prepared with your next witness?

11                   ATTORNEY SCHNEIDER:   We are.   We would call  
12          Tou Shoua Lee.

13                   THE COURT:   Sir, if you would please come  
14          to the witness stand, remain standing and the clerk  
15          will swear you in.

16                   THE CLERK:   Please raise your right hand.

17                   (Oath administered to witness.)

18                   THE WITNESS:   Yes.

19                   THE CLERK:   Please state your full name and  
20          spell it for the record please.

21                   THE WITNESS:   Tou Shoua Lee, T-O-U,  
22          S-H-O-U-A, and Lee.

23                   THE COURT:   Thank you, sir.   You may be  
24          seated.

25                   Miss Schneider, your witness.

1 ATTORNEY SCHNEIDER: Thank you.

2 **EXAMINATION OF TOU SHOUA LEE**

3 **BY ATTORNEY SCHNEIDER:**

4 Q Good afternoon, Mr. Lee. May I call you Tou Shoua?

5 A Yeah.

6 Q Or is it just Tou?

7 A You can call me Tou.

8 Q Tou. Thank you. How old are you, Tou?

9 A I'm 25 years old.

10 Q Where were you raised?

11 A I was raised in Appleton, Wisconsin.

12 Q And are you working now?

13 A Yes, I am.

14 Q Full-time?

15 A Yeah.

16 Q Tou, I want to direct your attention back to  
17 Saturday, December 7th of 2003 (sic), Saturday  
18 evening until the early -- 2013, into the early  
19 morning hours of December 8th. Do you remember if  
20 you had to work back on that day?

21 A I don't remember.

22 Q Okay. Do you remember where you were in the evening,  
23 I'm going to say after, around dinnertime?

24 A I was at home.

25 Q What were you doing?



1     A     I believe I was watching the Big 10 football  
2           championship game.

3     Q     And did you have plans for the night?

4     A     I did not.

5     Q     Ultimately did you have some plans?

6     A     No.

7     Q     Okay. Did anyone contact you?

8     A     Yes. My cousin did.

9     Q     And who was that?

10    A     Phong.

11    Q     And after talking with Phong, were plans made for the  
12           night?

13    A     Yeah.

14    Q     And what were those plans?

15    A     To go meet up at the bar.

16    Q     Was there a -- a particular bar you were going to  
17           meet up at?

18    A     City Limits in Menasha.

19    Q     Okay. Okay. One second.

20                 And did you end up meeting up with Phong?

21    A     Yes, I did.

22    Q     How did you get to City Limits?

23    A     I drove.

24    Q     Was anyone with you?

25    A     My buddy.

1 Q Did you stay at City Limits or did you go anywhere  
2 else?

3 A We were there and then we left.

4 Q Where did you go?

5 A We went downtown Appleton.

6 Q Who else was at City Limits besides yourself, you  
7 said a buddy, was Phong there?

8 A Yes, he was.

9 Q Anyone else you knew?

10 A Chong, Paul and Xung and Alyson.

11 Q And is Xung X-U-N-G?

12 A Yup.

13 Q Alyson?

14 A Yup.

15 Q Alyson, do you know her last name?

16 A I do not.

17 Q Is she a Caucasian girl?

18 A Yes.

19 Q The Chong that you referred to, Chong Lee, correct?

20 A Correct.

21 Q Is he here today in the courtroom?

22 A Yes, he is.

23 Q Can you identify him by some clothing that he's  
24 wearing?

25 A Green.

1 Q Long sleeve or short sleeve shirt?

2 A Long.

3 ATTORNEY SCHNEIDER: Your Honor, I'd ask  
4 the record reflect identification.

5 THE COURT: The record shall so reflect.

6 Q (BY ATTORNEY SCHNEIDER) You said Paul Lee was there.  
7 Do you know how Paul and Chong are related?

8 A I believe they are brothers.

9 Q So after City Limits you went downtown Appleton?

10 A Correct.

11 Q Did you go directly downtown or did you go somewhere  
12 else?

13 A I went home first.

14 Q Why did you go home?

15 A Because I live down the road so to drop off the  
16 car.

17 Q Did you not want to drive after you'd been out  
18 downtown?

19 A Correct.

20 Q Were you going to be drinking that night?

21 A Yes.

22 Q Do you remember where you went first?

23 A We went to Sharks.

24 Q And that's the pool hall?

25 A I believe so.

1 Q How many entrances are there to Sharks?

2 A I believe there are two.

3 Q The -- what I might call the main entrance, what

4 street does that face?

5 A College.

6 Q And can you get out or in another way?

7 A I believe so, yeah.

8 Q When you exit through the other door, or enter,

9 what's in that area?

10 A The alley.

11 Q Is there a big parking structure there too?

12 A Yes, there is.

13 Q When you went there, do you remember which entrance

14 or -- you used, either the College Avenue one or the

15 alley?

16 A I believe the alley.

17 Q How long do you think you were at Sharks?

18 A Possibly maybe 20, 30 minutes.

19 Q The group you had mentioned before, Chong, Paul,

20 Xung, Alyson, Phong, were they at Sharks as well?

21 A Yes, they were.

22 Q After leaving Sharks after about 20 to 30 minutes,

23 where did you go?

24 A We went down to Luna.

25 Q Did you all go as a group if you recall?

1     A     If I remember, yes, we did.

2     Q     Were there any other girls other than Alyson with

3           your group?

4     A     I don't think so.

5     Q     At Luna, where did you go to?

6     A     Just the bar to drink.

7     Q     Okay. Luna has both -- couple bars, correct?

8     A     Correct.

9     Q     Does it have a dance floor?

10    A     Yes, it does.

11    Q     Okay. So did you stay by the bar, move around?

12    A     Move around.

13    Q     Okay. Was anyone particularly with you while you

14           were at Luna or were they just there and doing their

15           own thing as well?

16    A     Everybody is doing their own thing.

17    Q     And at the end of the night, you didn't -- you could

18           walk home, correct?

19    A     Correct.

20    Q     You didn't need to wait for a ride or wait to give

21           anyone a ride?

22    A     Correct.

23    Q     Do you remember around bar closing time where you

24           were?

25    A     I believe I was by the entrance.

1 Q The entrance of Luna?

2 A Correct.

3 Q Prior to getting to the entrance, do you remember,  
4 were you on the dance floor by the bar or were you  
5 just walking through?

6 A I think I was walking from the dance floor.

7 Q Anyone with you?

8 A I don't think so, if I remember.

9 Q As you were walking through Luna past the bar into  
10 the entranceway, do you remember seeing anyone?

11 A Yes.

12 Q What did you see, Tou?

13 A I remember seeing Paul and Phong and them, they were  
14 like standing there talking.

15 Q Could you see who they were talking to?

16 A I don't remember.

17 Q Were they talking just among themselves or to anyone  
18 else, if you know?

19 A I believe they were talking to somebody else.

20 Q What did you do at that point?

21 A I stopped.

22 Q Was that in the area by the entrance or in by the bar  
23 still?

24 A By the bar.

25 Q Did you ever then go into that entranceway?

1 A Yes, I did.

2 Q What do you remember seeing when you went into the  
3 entranceway?

4 A I remember seeing them talking to somebody.

5 Q Who is them?

6 A Phong and Paul and them.

7 Q Did you see or know where Chong was at that time?

8 A I did not.

9 Q What did it look like to you when you saw Phong and  
10 Paul talking to this other person?

11 A It looked like they were gonna -- they were  
12 arguing.

13 Q What did you think or do at that time?

14 A I just thought I would stop there, just make sure  
15 that they don't do nothing stupid or fight or  
16 something.

17 Q Do you think you could have tried to keep it calm?

18 A Yes.

19 Q The person that they were arguing with or about to  
20 argue with, male or female?

21 A Male.

22 Q Do you remember anything about his race?

23 A He was Caucasian.

24 Q What do you remember then, Tou?

25 A I remember arguing, saying stuff back and forth, and

1           then I remember seeing Paul like throw a punch at  
2           him.

3     Q     Did he actually strike him?

4     A     From what I remember, I think he did.

5     Q     What happened then?

6     A     And then we all like stepped back, and then I was  
7           trying to make sure that it doesn't continue on.

8     Q     Do you remember the area where this was, was it  
9           brightly lit, dark, in the middle?

10    A     I believe it was in the front foyer so that's -- I  
11       believe that area is like dark.

12    Q     And with the people that were in that area, was it a  
13       big area or were there a lot of people in the area?

14    A     There was a lot of people.

15    Q     So you see Paul throw a punch, what do you remember  
16       then?

17    A     Then I remember just hearing something that sounded  
18       like a gunshot.

19    Q     Did you see anything before that?

20    A     I don't remember.

21    Q     How long do you think you watched what happened?

22    A     Five, ten seconds.

23    Q     When you heard that noise, did it seem like that was  
24       close to you?

25    A     Fairly, I guess.



1 Q Do you remember seeing anything?

2 A No.

3 Q Up to this point, Tou, had you seen Chong at all?

4 A I remember seeing him walk past like he was leaving  
5 the area.

6 Q Did he continue walking or did you see him do  
7 anything after that point?

8 A I remember seeing him like punch the guy that Paul  
9 punched.

10 Q What do you remember around that time?

11 A I remember seeing the guy drop.

12 Q Okay. If you know, Tou, in relation to when you  
13 heard that gunshot and saw Chong, you see him punch  
14 the guy that Paul had punched, is what you said, and  
15 then you saw the guy drop, correct?

16 A Correct.

17 Q Do you remember where in there, before, after or  
18 during, the noise was?

19 A It was I think after he punched him.

20 Q So you see the punch, then you hear the boom?

21 A Correct.

22 Q And then the guy drops?

23 A Correct.

24 Q Could you see or do you remember seeing anyone  
25 walking near or with Chong at that point?

1 A I believe Alyson was.

2 Q After this sequence and then the man's on the ground,  
3 what did the people in the area do?

4 A Everybody, like, scattered.

5 Q Did you stay in the area for any length of time?

6 A I did not.

7 Q Do you remember or can you remember anything about  
8 Chong's clothing?

9 A I remember it was a dark color.

10 Q Okay. Probably not a thing guys pay attention to as  
11 much as ladies, would you agree with me, Tou?

12 A Correct.

13 Q Do you remember if he had any hat on?

14 A I don't remember.

15 Q Okay. I thought that might have been more of a guy  
16 kind of thing than a lady thing. After the guy  
17 dropped, did you look at him at all?

18 A I looked at him when I was leaving.

19 Q What do you remember seeing?

20 A I remember just seeing a guy laying on the ground.

21 Q Did it surprise you?

22 A Yes, it did.

23 Q Did it shock you?

24 A Yes, it did.

25 Q I just want to clarify one thing. Just one second

1           please.

2                   After Paul threw the punch, did you see what he  
3           did?

4     A     I don't remember.

5     Q     Okay. Was there any amount of time between when Paul  
6           threw the punch to when then you saw Chong throw a  
7           punch?

8     A     Five or ten seconds, I think. I don't remember.

9     Q     Do you remember anything -- so you left Luna then,  
10          correct?

11    A     Correct.

12    Q     Were you paying attention to who was near you when  
13          you left?

14    A     I didn't, I was not.

15    Q     Let me ask you this, Tou. Was there -- were there  
16          plans that anybody was going to crash at your place  
17          after the night was done?

18    A     No, there was not.

19    Q     So you didn't need to wait for anybody or wait for  
20          anybody to catch up?

21    A     Correct.

22    Q     After you went outside of Luna, you left, did you go  
23          to the right or to the left?

24    A     I went to the right.

25    Q     Okay. And which direction did you go to then walk

1 home?

2 A I just walked down Division Street.

3 Q Do you remember seeing anything as you walked down  
4 Division Street?

5 A I remember just right outside of Luna Alyson and some  
6 female was fighting, and then there was a guy saying,  
7 hey, help me split them up.

8 Q Did you try to help?

9 A Yes, I did.

10 Q Could you hear anything that was being said at that  
11 time?

12 A I don't remember what was being said.

13 Q And after that kind of help me split them up with the  
14 girls, did you stop anywhere or did you continue to  
15 walk home?

16 A I just walked home.

17 Q When you were outside at the time you saw the girls  
18 fighting, did you hear anything else other than the  
19 girls arguing or fighting?

20 A I remember hearing police sirens.

21 Q Did you hear any other noises that sounded like  
22 gunshots at all?

23 A I don't think so.

24 Q Other than -- do you remember the girls, the area  
25 where they were fighting, were other people

1 watching?

2 A There was a lot of people.

3 Q Okay. Did you really pay attention to what those  
4 people were doing other than just standing by and  
5 watching?

6 A No.

7 Q And at some point, Tou, the police came and spoke  
8 with you, correct?

9 A Correct.

10 Q And do you remember them asking you to draw  
11 something?

12 A Yes, I do remember.

13 Q Okay. And was it Sergeant Thao that spoke to you?

14 A Correct.

15 ATTORNEY SCHNEIDER: Are we at 101?

16 THE CLERK: 102.

17 Q (BY ATTORNEY SCHNEIDER) Just give me one second.

18 And then, Tou, if you want to turn that way --  
19 actually, I'm probably going to have to do this in  
20 spots.

21 First, just to confirm, I'm showing you Exhibit  
22 102. I'm going to turn it sideways. It may look a  
23 little funny, but that's the best way I can get it  
24 all in right now.

25 Do you recognize your name in where it would be

1 kind of the upper left-hand corner of this drawing?

2 A Yes.

3 Q And there is a date below that, and I can zoom in on  
4 it, but it's - I'll flip it this way - 12/18/13?

5 A Correct.

6 Q And did you draw some of this or did the officers  
7 draw this?

8 A I think the officer did.

9 Q Was it based upon what you were describing to him?

10 A Correct.

11 Q And is there an area on here where you marked where  
12 you were?

13 A Yes, there is.

14 Q And how is that marked, Tou?

15 A With an X.

16 Q Okay. Is your -- is there any other -- is your name  
17 near it?

18 A Yes, there is.

19 Q So as I look at what's drawn as a box, in the upper  
20 left there is an X and then the name Tou Shoua Lee?

21 A Correct.

22 Q Okay. Did you -- I don't know --

23 ATTORNEY SCHNEIDER: Can I approach, Judge?

24 Sorry. I know I don't have to ask permission, but I  
25 probably still will.

1                   THE COURT: That's okay. I won't punish  
2                   you if you do.

3       Q       (BY ATTORNEY SCHNEIDER) Tou Shoua, I want to just  
4                   walk through this.

5                   So I'm pointing to the X in the upper left  
6                   corner. That's where you wrote Tou Shoua Lee.

7       A       Correct.

8       Q       And then as we go across that area, there is another  
9                   X?

10      A       Yes.

11      Q       Who was located in that spot?

12      A       Phong.

13      Q       Phong. And that's what's written next to that X?

14      A       Correct.

15      Q       And then going to the right further, there is the  
16                   word Paul, correct?

17      A       Correct.

18      Q       Where -- and I'm going to have you do this with the  
19                   -- and go ahead and stand up. I know it's a little  
20                   odd, but watch out, there's a step.

21                   Which X represents Paul?

22      A       I believe this one.

23      Q       So it would be the X that's immediately below his  
24                   name?

25      A       Correct.

1 Q As we continue over, there's additional X's that I  
2 would say are just to the left of a line going up and  
3 down, correct?

4 A Correct.

5 Q And over to the side is -- did you know who these  
6 three X's were?

7 A I did not.

8 Q Okay. Joe Thor's name is over to the right. Do you  
9 remember Joe being in the area?

10 A Yes, I do.

11 Q Do you remember where he was?

12 A I believe he was -- he's one of those X's. I don't  
13 remember exactly which ones.

14 Q Is there an area on here where you drew for the man  
15 that fell, the victim?

16 A I think so.

17 Q Okay. I'm going to give you the pointer. And let me  
18 just shift the image a little bit.

19 Now, is that a better representation where you  
20 put the X for the victim?

21 A Correct.

22 Q Where is that?

23 A I believe it was right there.

24 Q Okay. Is there any -- there's an X. Is there any  
25 letters near the X that would be representation for



1 the victim?

2 A VC.

3 Q Okay. There's writing on here about Chong Lee. Do  
4 you see that?

5 A Correct.

6 Q Did you write that or did the officer?

7 A I believe the officer did.

8 Q And was that based upon what you described to him?

9 A Yes.

10 Q Okay. So the names Chong Lee and then Alyson and  
11 Michael Thor are written?

12 A Correct.

13 Q Okay. I'm going to have you use the pointer, and I  
14 know this is hard because they're up so high, but can  
15 you point out for the jury the direction that you  
16 remember seeing Chong as he walked through that  
17 area?

18 A I believe he was coming from the bar area, which  
19 would be this way.

20 Q Okay. So he would be going from the left to the  
21 right?

22 A Correct.

23 Q And then what -- did you write on here some words  
24 written on here about what Chong Lee then did?

25 A I don't remember.

1 Q Okay. There is words on this drawing, I'm going to  
2 assume they say approaches VC, hears boom. Does that  
3 seem to be what they are?

4 A I believe so.

5 Q And is that consistent with what you told Sergeant  
6 Thao?

7 A Correct.

8 Q Were there any other people near the man that  
9 ultimately fell to the ground?

10 A There were some other people.

11 Q Okay. I just want to show you. This is kind of  
12 written going up and down the page. There is the  
13 word Luna foyer. Do you see that?

14 A Yes.

15 Q Okay. And there is some other words written there.  
16 Can you read those?

17 A I cannot.

18 Q Okay. And this -- you completed this with Sergeant  
19 Thao?

20 A Correct.

21 Q And were these -- any notes on here based upon what  
22 you told him?

23 ATTORNEY VISHNY: Objection. Lack of  
24 personal knowledge.

25 A I don't know.

1 THE COURT: Foundation, counsel.

2 Q (BY ATTORNEY SCHNEIDER) You were present when this  
3 drawing was made, correct?

4 A Correct.

5 Q Did you actually sign in the corner?

6 A I don't remember.

7 Q Okay. And what is written on here, what we've talked  
8 about so far is fair and accurate as you recall where  
9 people were?

10 A As far as I can remember.

11 ATTORNEY VISHNY: I'm sorry. I couldn't  
12 hear the answer. He's facing away.

13 A As far as I can remember.

14 Q And the words where it says, approaches victim, hears  
15 boom, that would be consistent with what you told  
16 Sergeant Thao --

17 A Correct.

18 Q -- about Chong Lee?

19 A Correct.

20 Q Do you remember, Tou, that Sergeant Lee (sic) asked  
21 if you would write a written statement as well?

22 A I believe so.

23 Q And when that was written, did you write it out  
24 yourself?

25 A Yes, I did.

1 Q Was Sergeant Thao even in the area when you were  
2 writing it out?

3 A Yes, he was.

4 Q Do you remember him leaving for a period of time?

5 A No.

6 Q Okay.

7 ATTORNEY SCHNEIDER: Then at this point I  
8 don't have any other questions. I move -- would move  
9 102 in.

10 THE COURT: Any objection to the receipt of  
11 Exhibit 102?

12 ATTORNEY VISHNY: No.

13 THE COURT: Exhibit 102 shall be received.

14 ATTORNEY VISHNY: May I approach?

15 THE COURT: You may.

16 (A bench conference was held.)

17 ATTORNEY VISHNY: Now -- where is the  
18 diagram, Exhibit 102?

19 ATTORNEY SCHNEIDER: Up by the clerk.

20 **EXAMINATION OF TOU SHOUA LEE**

21 **BY ATTORNEY VISHNY:**

22 Q Mr. Lee, right after hearing that boom, you left the  
23 bar, right?

24 A Correct.

25 Q You didn't wait around to see what was gonna happen.

1 A Correct.

2 Q You didn't wait around to see what had happened to  
3 the victim, right?

4 A Correct.

5 Q And your mind was set on getting out of there,  
6 right?

7 A Correct.

8 Q Now, if I look at this diagram, if I understand it  
9 correctly -- let me just -- everybody, as I  
10 understand it, that was around there was in a big  
11 hurry to get out, right?

12 A Correct.

13 Q And so if I -- I'm going to actually turn the diagram  
14 back a little bit.

15 So the door to get out of Luna, do you know  
16 where that is on that diagram?

17 A I believe it's --

18 Q You're going to have to talk louder, unfortunately,  
19 though?

20 A I believe it's like in the middle to the right kind  
21 of.

22 Q The middle to the right? So you don't really see it  
23 drawn on the diagram?

24 A I see it, but I'm not sure if that's the right --

25 Q Okay. I'm going to show you a different exhibit.

1           Maybe this will be a little bit more helpful.

2                   ATTORNEY VISHNY: This is No. 2. Actually,  
3           you've used No. 1 before. They're identical, right?

4                   ATTORNEY SCHNEIDER: Two has the red X, one  
5           does not.

6                   ATTORNEY VISHNY: All right. I'll use one.  
7           I'm trying to get it out without ruining it.

8    Q       (BY ATTORNEY VISHNY) Okay. I'm just going to show  
9           you what's been marked as Exhibit No. 1.

10                   Now, just to kind of orient you, this is the  
11           main door of Luna. Do you understand that?

12   A       Yes.

13   Q       Okay. And what you're saying, if you look at -- do  
14           you want to look at your diagram while I do this?

15                   ATTORNEY SCHNEIDER: It's actually still  
16           above you, Attorney Vishny.

17   Q       (BY ATTORNEY VISHNY) You can look at both at the  
18           same time.

19                   ATTORNEY VISHNY: Exhibit 1, as I  
20           understand it, is drawn to scale, right?

21                   ATTORNEY SCHNEIDER: Yes.

22   Q       (BY ATTORNEY VISHNY) But the one up there is not  
23           drawn to scale, Exhibit No. 102, this is just a rough  
24           sketch. Okay?

25   A       Okay.

1 Q All right. So when you see -- when you hear the  
2 shot, everybody runs out, right?

3 A Correct.

4 Q And so the person who is the closest to the door when  
5 everybody has run out, according to your sketch, is  
6 Chong Lee, right?

7 A Correct.

8 Q Okay. Because the door is over here, and that helps  
9 you kind of visualize -- even though the door isn't  
10 on Exhibit 102 up on the screen, that kind of helps  
11 you show where the door would be, right?

12 A Correct.

13 ATTORNEY VISHNY: Where is that pointer?

14 ATTORNEY SCHNEIDER: It's on the other side  
15 of him against the wall.

16 ATTORNEY VISHNY: Okay.

17 Q (BY ATTORNEY VISHNY) So utilizing the pointer and  
18 trying to be, you know, the door would be somewhere  
19 right about where I'm pointing, right?

20 A Correct.

21 Q So everybody starts running, so the purpose -- you  
22 put Chong Lee, according to what you think, is here  
23 at the time of the shooting, right --

24 A Correct.

25 Q -- according to this diagram. So he's the closest to

1 the door, right?

2 A Right.

3 Q And then after him closest to the door would either  
4 be Michael Thor or Paul, right?

5 A Right.

6 Q And then Phong would be closer, right?

7 A Right.

8 Q And then Alyson, right?

9 A Right.

10 Q And they're all running out, right?

11 A Right.

12 Q So Chong Lee is the first person out the door as far  
13 as you know because he's in front of you, right?

14 A Right.

15 Q And of course it's going to take you longer because  
16 you're way up at the corner --

17 A Right.

18 Q -- right?

19 I'd like to play Exhibit No. 31. Okay. We're  
20 going to go frame by frame.

21 Now, when you -- you didn't actually draw that  
22 diagram, right?

23 A Right.

24 Q And even when it's based on what you said, you were  
25 being interviewed by Sergeant Thao, right?



1 A Right.

2 Q And it's fair to say he was leading you quite a bit  
3 during that interview, right?

4 A Right.

5 Q Trying to get you to say what he wanted you to say?

6 A I don't know if he was.

7 Q Okay. You knew that Chong Lee had already been  
8 arrested for this at the time that Sergeant Thao came  
9 to talk to you, right?

10 A Correct.

11 Q So it had been about a week or so since Chong had  
12 been arrested?

13 A I don't remember.

14 Q Okay. And Sergeant Thao obviously told you that he  
15 believed that Chong had committed the crime --

16 A Correct.

17 Q -- right?

18 A Correct.

19 Q And he told you that before you said anything,  
20 right?

21 A Right.

22 Q And when he came and talked to you -- actually, when  
23 he first showed up, one of the things you said was,  
24 boy, you were glad to see Sergeant Thao, right?

25 A Right.

1 Q Because you're a little worried about problems with  
2 the Appleton police, right?

3 A Right.

4 Q And it's fair to say, because Sergeant Thao is Hmong  
5 and you are Hmong, you felt more comfortable talking  
6 to him?

7 A Correct.

8 Q You thought he would understand you more?

9 A Correct.

10 Q But even though you said that, you expressed some  
11 concerns about whether or not you would be perceived  
12 as being involved in this shooting, right?

13 A Correct.

14 Q And Sergeant Thao expressed some concerns that you  
15 could be involved in this, right?

16 A I don't remember.

17 Q Okay. He told you -- did he tell you that if you  
18 were helpful you really wouldn't have much to worry  
19 about, right?

20 A I don't remember.

21 Q Okay. We'll get back to that. All right.

22 I'm going to show you what's been marked as  
23 Exhibit No. 31.

24 THE COURT: You want the lights brought  
25 down?

1                   ATTORNEY VISHNY: You know, I can see it  
2                   perfectly well if people can see it.

3                   UNIDENTIFIED JUROR: I would like it.

4                   ATTORNEY VISHNY: Okay. Well then we're  
5                   going to do it.

6       Q       (BY ATTORNEY VISHNY) All right. So we're going to  
7                   play this -- we're going to play this slowed down.  
8                   All right?

9       A       Okay.

10      Q       Can you see it okay?

11      A       Yes.

12      Q       All right. We're starting at 13:50:25.

13                   (Video played.)

14                   Can you see who the first person is going out  
15                   the door?

16      A       The female?

17      Q       No, there's a guy. Now can you see the very first  
18                   person going out the door?

19      A       Yes.

20      Q       That's not Chong Lee, correct?

21      A       I don't think so.

22      Q       That's Joe Thor?

23      A       I don't know. I can't tell.

24      Q       Okay. And then there's a woman who has on, what  
25                   looks like in the video, blonde hair and a white

1 coat, right?

2 A Right.

3 Q Do you know who she is?

4 A I can't tell.

5 Q Okay.

6 ATTORNEY SCHNEIDER: Well, I guess I just  
7 want some clarification on that question because I  
8 think I see what I would say are two women.

9 ATTORNEY VISHNY: I'm going to clarify it.  
10 I'm about to clarify it.

11 Q (BY ATTORNEY VISHNY) There's two women going out  
12 what looks like the left side of the door. They're  
13 not people who you know who are with your group at  
14 all, right?

15 A Right.

16 Q So we have the man going -- pushing the door on the  
17 right, you believe that's Joe Thor, right?

18 A I don't know.

19 Q You're not sure. Okay. So then we'll go to the next  
20 frame, right? You see a girl right behind Joe Thor  
21 kind of more in the foreground and it looks like a  
22 white coat?

23 A Yes.

24 Q Do you know who she is?

25 A I do not.

1 Q Okay. Play another frame.

2 Now, the next person you see behind -- I'm going  
3 to get that pointer.

4 ATTORNEY SCHNEIDER: Evan, do you want to  
5 put on the record what frame we're looking at?

6 ATTORNEY WEITZ: Sure.

7 Q (BY ATTORNEY VISHNY) We're at 13:50:29. All right.

8 So this is the man who you're not sure who it  
9 is, right?

10 A Right.

11 Q And this is a woman, you're not sure who it is,  
12 right?

13 A Right.

14 Q And then this is Paul Lee, correct?

15 A Looks like, yes.

16 Q Looks like Paul Lee? And you can see there's  
17 something in his hand, right? Can you see that or  
18 you can't tell?

19 A I can't tell.

20 Q Okay. That's fine. Let's go to the next frame.

21 Okay. And now, when you see Paul Lee, does it  
22 appear to you that he's putting his hand in his  
23 pocket.

24 A Looks like it.

25 Q Okay. And that would be at 13:50:30.

1                   Next frame. And then there's somebody behind  
2           Paul Lee now, are we -- wait --

3                   ATTORNEY VISHNY: Did I say that right?

4                   ATTORNEY WEITZ: Yes.

5       Q       (BY ATTORNEY VISHNY) We're still at 13:50:30. You  
6           can see somebody here is now in the next frame behind  
7           Paul Lee, right?

8       A       Right.

9       Q       And does -- do you recognize that person as Phong  
10          Lee?

11      A       Looks to be, yes.

12      Q       Okay. And we'll go to the next frame.

13                  All right. And then we kind of have a gap after  
14          Phong Lee, right?

15      A       Right.

16      Q       Next frame?

17                  ATTORNEY SCHNEIDER: I think we should  
18          identify each play point when she says a frame and  
19          she asks a question.

20                  ATTORNEY VISHNY: It's still 13:50:30.

21                  ATTORNEY SCHNEIDER: If he's going at one  
22          pause, we would be able to recreate the record.

23                  ATTORNEY VISHNY: I will do that. I would  
24          like the record to reflect the last two frames were  
25          at 13:50:30. Now we'll do the next frame.

1 Q (BY ATTORNEY VISHNY) And now we're still at  
2 13:50:30. You still can see kind of a gap, right?

3 A Right.

4 Q Next frame. Next frame. We're still at 13:50:30.  
5 This is also 13:50:30.

6 So right now we have a gap, we're still at  
7 13:50:30, and Phong is the last guy out, right?

8 A Correct.

9 Q So the first guy, who you say might be Joe but you're  
10 not sure, Paul and Phong are the first people out,  
11 right?

12 A Right.

13 Q And then there's this woman who is right there as  
14 well, correct?

15 A Correct.

16 Q Next frame. And we are now at 13:50:31. You don't  
17 see any new people coming in yet, right?

18 A Right.

19 Q Next frame, also 13:50:31, no people coming?

20 A Right.

21 Q 13:50 -- next frame, 13:50:31, no people coming,  
22 right?

23 A Right.

24 Q Next frame, 13:50:31, no people coming?

25 A Right.

1 Q Next frame. Now at 13:50:31 you're starting to see  
2 somebody come into the very lower left-hand corner,  
3 right?

4 A Correct.

5 Q Next frame. 13:50:31, the woman who we talked about  
6 before, she's going out the door now, right?

7 A Right.

8 Q Okay. Next frame, 13:50:31, we see a person coming  
9 in, right?

10 A Right.

11 Q And next frame, 13:50:32, you can see this person  
12 better now, right?

13 A Right.

14 Q This is Tom Lee, isn't it?

15 A Yes.

16 Q All right. Next frame. That's 13:50:30. Next  
17 frame. 13:50:32. Next frame. 13:50:32. You see  
18 another person coming in, right?

19 A Right.

20 Q And that -- do you recognize that person?

21 A Appears to be Chong.

22 Q Appears to be Chong. Okay. Next frame. 13:50:32.  
23 Next frame. 13:50:32 as well. You still see Tom Lee  
24 and Chong, right?

25 A Right.



1 Q And now you see a hand right behind Chong Lee?

2 A Yup.

3 Q Okay. Next frame. 13:50:32. Next frame. 13:50:33.

4 See this woman with the hands -- where you saw the  
5 hand sticking out before?

6 A Yup.

7 Q Do you recognize her?

8 A Possibly Alyson.

9 Q Possibly Alyson. Okay. We'll go to the next frame,  
10 see if it's easier for you to tell.

11 Does it look like Alyson to you more now at  
12 13:50:33?

13 A Yes, it does.

14 Q Okay. Let's keep playing the frames. Next frame.  
15 Okay.

16 By the way, at 13:50:33 here, you see Chong  
17 here, you can see both of his hands, right?

18 A Correct.

19 Q No hands in the pockets, right?

20 A Right.

21 Q Not holding a gun in his hand?

22 A Right.

23 Q Next frame. 13:50:33. Next. Still at 33. I'm just  
24 going to do the seconds now. All right. Next frame.  
25 Still 33. Next frame. Still 33. Next frame.

1                   And you see a woman here kind of reaching  
2                   towards Alyson? Do you see that?

3     A     Yes.

4     Q     Do you know who she is?

5     A     I do not.

6     Q     Okay. Next frame. Next frame. Okay. Now we're at  
7                   34.

8                   Do you know who this person is?

9     A     I do not.

10    Q     You do not know. This man appears to have like a  
11                   stocking cap on or something or winter hat?

12    A     Like a beanie, yeah, correct.

13    Q     And can you see that he's holding something in his  
14                   hand?

15    A     Appears to be something.

16    Q     Like does it appear to be beer to you at all? Or you  
17                   can't tell?

18    A     I can't tell.

19    Q     All right. Next frame. We're at 34. Next frame.  
20                   Next frame. 34. Next frame still at 34. Next  
21                   frame. Next frame. Next frame. We're at 35 now.

22                   Do you know who this person is?

23    A     I do not.

24    Q     You do not know. Okay.

25                   Next frame. Next frame. Next frame. We're

1 still at 35. Next frame. Okay. We're at 36 now.

2 Do you know who this person is?

3 A I do not.

4 Q Okay. But it's not you?

5 A Correct.

6 Q Okay. Next frame. I'll tell you what we're going to  
7 do. Do you recognize either of these two people who  
8 are leaving?

9 A That possibly might be me.

10 Q This -- is that where I'm putting the pointer right  
11 here?

12 A Correct.

13 Q So the second guy, you think that's you?

14 A Correct.

15 Q Okay. I'm going to do the next frame to help clarify  
16 that, and this was at 36 by the way, and this is also  
17 36. Do you now feel that that's you?

18 A I can't tell.

19 Q You can't tell. Okay. Will it help you identify  
20 yourself if we play it fast or not, like -- by fast I  
21 mean normal speed?

22 A You can try, but I'm not going to be able to tell, I  
23 don't think, because it's black and white.

24 Q Okay. We won't play it then.

25 ATTORNEY VISHNY: We can put the lights

1 back on, Judge.

2 Q (BY ATTORNEY VISHNY) Now you had been drinking that  
3 night, right?

4 A Yes.

5 Q With Tom Lee?

6 A Correct.

7 Q And you were pretty intoxicated that night, weren't  
8 you?

9 A Yeah, I would say so.

10 Q Would it be fair to say you were drunk that night, if  
11 I use that word?

12 A Yes.

13 Q And have you smoked marijuana as well?

14 A No.

15 Q Okay. Just alcohol.

16 A Correct.

17 Q No weed?

18 A Yeah.

19 ATTORNEY SCHNEIDER: Judge, I'm going to  
20 ask to approach.

21 THE COURT: You may.

22 (A bench conference was held.)

23 Q (BY ATTORNEY VISHNY) All right. Now, and you had  
24 been drinking for several hours by this point,  
25 right?

1 A Correct.

2 Q Now you know that Chong was wearing a dark jacket,  
3 right?

4 A Right.

5 Q But you don't remember exactly what it looked like.

6 A Right.

7 Q I'm going to show you what's been marked as Exhibit  
8 No. 103. Does this look like the jacket Chong was  
9 wearing that night to you?

10 A That does not.

11 Q It does not?

12 A It does not.

13 Q Okay. So you don't think it was?

14 A I don't think so.

15 Q Okay. But you're not positive, right?

16 A Right.

17 Q Now, when you look at this jacket, one of the things  
18 that you can see is that it has two different  
19 fabrics, right?

20 A Right.

21 Q It's got a dark black with some kind of a fabric with  
22 a sheen in the middle, right?

23 A Right.

24 Q And it has what looks like dark gray sleeves for the  
25 sleeve, right?

1 A Right.

2 Q And they're made out of a different material?

3 A I believe so.

4 Q And there's stripes on the cuff?

5 A Yeah.

6 Q Do you remember that Phong was wearing a white  
7 vest?

8 A I don't remember.

9 Q You can't recall?

10 ATTORNEY VISHNY: What was that? That was  
11 103 before?

12 THE COURT: Yes.

13 Q (BY ATTORNEY VISHNY) While she's marking that, I'm  
14 going to show you what's been marked as Exhibit 104.  
15 This is a white vest, right?

16 A Yes, it is.

17 Q You don't remember if Phong Lee was wearing that that  
18 night or not?

19 A I don't remember.

20 Q It could be but it might not be?

21 A Correct.

22 Q Okay. I'm showing you what's been marked as Exhibit  
23 No. 105. Do you recognize this coat?

24 A I do not.

25 Q You do not. So you don't remember seeing Paul Lee in

1           this coat that night, correct?

2     A     I don't -- correct. I don't remember.

3     Q     So you really don't remember what coats people were  
4           wearing that night, right? It wasn't of any  
5           particular importance to you?

6     A     Right.

7     Q     Now, when you were interviewed with Sergeant Thao,  
8           you never mentioned seeing Tom Lee at the time of the  
9           shooting, did you?

10    A     Correct.

11    Q     Even though he was apparently walking out of Luna  
12           just several people and a couple seconds before  
13           you?

14    A     Correct.

15    Q     You just didn't remember that you saw him at that  
16           time, right?

17    A     Correct.

18    Q     Now, when you saw -- I think as you mentioned you  
19           knew Chong -- when Sergeant Thao came to talk to you,  
20           you knew Chong had been arrested, right?

21    A     Right.

22    Q     And you told Sergeant Thao that you had seen a post  
23           to all your friends on Facebook that Chong had been  
24           arrested, right?

25    A     Right.

1 Q And had been in the newspaper?

2 A Right.

3 Q And when you talked to Sergeant Thao, what you told  
4 him was that you told him where you were and said it  
5 was hard to remember where people were, right?

6 A I believe so.

7 Q And you told him that Paul Lee threw a punch and then  
8 there was a bang, right?

9 A I don't remember.

10 Q You don't recall. And then do you recall Sergeant  
11 Thao telling you that other people were claiming that  
12 Chong Lee was the shooter?

13 A I don't remember.

14 Q Okay.

15 ATTORNEY VISHNY: I'm sorry that people  
16 have to bear with me here.

17 THE COURT: That's okay.

18 ATTORNEY VISHNY: I'm looking for it and  
19 I'm not finding it right now.

20 THE COURT: Take a moment if you need to.

21 Q (BY ATTORNEY VISHNY) Do you remember telling  
22 Sergeant Thao that you didn't know who the shooter  
23 was?

24 A I don't remember.

25 Q You don't remember.



1 A Right.

2 Q Okay. Now do you remember Sergeant Thao telling you  
3 -- you telling him you didn't know who did it and him  
4 saying that this was serious, it's not like a fight  
5 where people just go punch each other, that they were  
6 -- you were talking about a murder. Do you have any  
7 recall of that?

8 A I don't remember.

9 Q Okay. And if I showed you -- I'm going to show you  
10 what's an agreed upon transcript between --

11 ATTORNEY VISHNY: Judge, I'm sorry, there  
12 have been different versions of this transcript  
13 floating around, so I'm a little concerned about  
14 this.

15 THE COURT: Take a moment if you need.

16 ATTORNEY VISHNY: Okay. Okay. Have this  
17 marked. 106.

18 Q (BY ATTORNEY VISHNY) I'm going to show you what's  
19 been marked as Exhibit No. 106, and I'm just going to  
20 let you know that it's -- this is a transcript that  
21 was prepared of your interview. Okay?

22 A Okay.

23 Q Now, before you came to court today, when you met  
24 with the District Attorney they gave you a copy of a  
25 police report prepared by Sergeant Thao to review,

1 right?

2 A I believe so, yeah.

3 Q But that police report was just a summary, wasn't  
4 it?

5 A Correct.

6 Q It didn't have everything in there that you said,  
7 right?

8 A Right.

9 Q You weren't allowed -- you weren't provided, rather,  
10 with a copy of the tape to listen to, right?

11 A Right.

12 Q Or given a copy of the transcript to listen to?

13 Okay? And so I'm just going to ask you to read this.

14 So, you know, it starts out with you just saying  
15 your name, date of birth, your phone number, things  
16 like that, right?

17 A Right.

18 Q Okay. And right from the start Sergeant Thao tells  
19 you you have to be -- he wants you to be totally  
20 honest, right?

21 A Right.

22 Q And right in the beginning -- and you know at this  
23 point Chong's been arrested, right?

24 A Right.

25 Q And right in the very beginning he says to you that

1           we've talked to Phong, we've talked to Joe, other  
2           people, even Paul. Everybody is very honest, so I  
3           come here knowing pretty much what happened. So he  
4           tells you he already knew what occurred, right?

5     A     Correct.

6     Q     And then he starts telling you or asking you some  
7           questions, right?

8     A     Right.

9     Q     And, you know, you're describing what you did, right,  
10          that night, watching the Big 10 game, going downtown,  
11          et cetera, et cetera. Fair?

12    A     Yup.

13    Q     Fair enough? Okay. And I'm just saying this not to  
14          repeat your testimony but to just kind of orient you.

15    A     Okay.

16    Q     Okay. And, you know, you start telling him  
17          everything that you did and that you see a fight,  
18          right?

19    A     Right.

20    Q     Okay. And you told him you saw -- I'm going to turn  
21          your attention to Page 8, very bottom of the page.  
22          Does that help remind you you told him what you told  
23          him?

24    A     Yes.

25    Q     Okay. And what is it that you said?

1 A I remember seeing just like Paul like punch -- throw  
2 a punch at something.

3 Q Okay. And then the next -- what you told him after  
4 that was the next thing there was a bang, right?

5 A Yup.

6 Q Right. You don't say anything here about then seeing  
7 Chong Lee throw a punch and then a bang, you just  
8 said the next thing you knew after Paul threw the  
9 punch is there was a bang, right?

10 A Yup.

11 Q And that everybody was leaving?

12 A Correct.

13 ATTORNEY SCHNEIDER: What page are you on?

14 ATTORNEY VISHNY: That was Page 9. I  
15 apologize, counsel.

16 Q (BY ATTORNEY VISHNY) I'm just going to kind of move  
17 this ahead. You're talking about -- and then at that  
18 point, looking to Page 10, Sergeant Thao starts  
19 drawing a diagram, right?

20 A Like --

21 Q You never draw that diagram yourself, right?

22 A Right.

23 Q Had you seen the diagram before you came into court  
24 today?

25 A I think I've seen a copy.

1 Q When? Was that when the District Attorney met with  
2 you?

3 A I believe so.

4 Q Okay. Did you see a copy that night when Sergeant  
5 Thao drew it, do you know?

6 A I don't remember.

7 Q Okay. Fair enough. All right. And then when he  
8 talks to you about leaving, asks you if you've had  
9 any alcohol in your hands, right?

10 A Right.

11 Q And you tell him no, you had nothing in your hands,  
12 right?

13 A Right.

14 Q And then you mention that who you saw over there was  
15 Phong and Paul and maybe Joe, right?

16 A Right.

17 Q And you think that they were all standing by a wall,  
18 right?

19 A Correct.

20 Q Now going back to your diagram, just to interrupt  
21 this a minute, going back to Exhibit 102 where you  
22 placed the victim in this case, he wasn't standing by  
23 a wall, right?

24 A Right.

25 Q He's kind of in the area where these two foyers

1 occur, where these two foyers meet each other, right?

2 A Correct.

3 Q So if you go to the scale diagram, he's not over  
4 here, from what you recall, by the stairs, he's more  
5 out in this area, right?

6 A Right.

7 Q And this is where he's standing right here when --  
8 and when you hear the pop, right?

9 A Right.

10 Q And so where he falls, from what you remember, he  
11 falls right here kind of in the middle where you have  
12 him right at the point where these two foyers meet,  
13 right?

14 A Right.

15 Q That would be a fair statement?

16 ATTORNEY SCHNEIDER: Can I just ask that  
17 she try to identify on the record where she had the  
18 pointer because otherwise --

19 ATTORNEY VISHNY: Yes.

20 ATTORNEY SCHNEIDER: On the bottom drawing.  
21 You were holding it on the bottom drawing for quite a  
22 while.

23 ATTORNEY VISHNY: I'm going to actually  
24 have him mark it.

25 Q (BY ATTORNEY SCHNEIDER) Okay. So I'm going to ask

1           you to mark this drawing.

2                   ATTORNEY SCHNEIDER: Can I just see if I  
3           have a different copy so we don't continue to have  
4           that marked on by several people?

5                   ATTORNEY VISHNY: Nobody's marked on it at  
6           all at this point, so I don't see a problem with the  
7           record being confused. I'm going to have -- put on  
8           the record the color and have him put his initials.

9                   THE COURT: Do you have another one?  
10          Otherwise --

11                   ATTORNEY SCHNEIDER: Not of that size, and  
12          that's why. I have another one that's like this  
13          which is a representation of the area where he was  
14          indicating the victim was, so I think she could use  
15          this which is a portion of that drawing.

16                   ATTORNEY VISHNY: Well, Judge, I think it  
17          would be better, I mean other witnesses have marked  
18          on other large drawings so far.

19                   THE COURT: I'm going to allow it.

20                   ATTORNEY VISHNY: Okay. Thanks.

21          Q        (BY ATTORNEY VISHNY) I'm going to ask you to come  
22          off the witness stand here. All right? And I'm  
23          going to ask you now if it's fair to say, you know,  
24          based on looking where you have the guy who fell, if  
25          you would put him on -- where you have him on Exhibit

1           102, can you tell where it corresponds on Exhibit No.  
2           1?

3     A     Like right around here.

4     Q     Okay. And could you put the word V for victim right  
5           there?

6     A     (Witness complying.)

7     Q     Okay. And can you put -- draw a little arrow and put  
8           your name?

9     A     Initials or name?

10    Q     Put Tou Shoua. How's that?

11    A     (Witness complying.)

12    Q     Okay. All right. Thank you.

13                   THE COURT: I don't know if you mentioned  
14           it, the record should reflect this was a blue -- blue  
15           pen that was utilized by Mr. --

16                   ATTORNEY VISHNY: Yeah. I was just about  
17           to do that. That's a blue Sharpie that was used by  
18           Tou Shoua, and he has placed where he believes the  
19           victim was and where he thinks he was standing -- not  
20           where Tou Shoua was standing but where he believes  
21           the victim was standing at the time he was shot.

22    Q     (BY ATTORNEY VISHNY) Okay? All right. Now I'm  
23           going to go back over here. And you're talking again  
24           with -- with Sergeant Thao. Right now we're on Page  
25           12, right?



1 A Right.

2 Q Okay. And going to Page 13, right?

3 A Right.

4 Q All right. Still no mention of Chong Lee here,  
5 right?

6 A Right.

7 Q Going to Page 14. All right? And now, again, you're  
8 starting to talk about seeing the fight, seeing Paul  
9 swing at him, right?

10 A Right.

11 Q No mention of Chong Lee.

12 A Right.

13 Q Page 15, no mention of Chong Lee, right?

14 A Right.

15 ATTORNEY SCHNEIDER: These pages are quite  
16 long. Unless he's a speed reader, I'd like to ask  
17 her to give him a little bit of time.

18 Q (BY ATTORNEY VISHNY) Are you able -- have I given  
19 you enough time or would you like to go back and look  
20 at that?

21 A I'm just skimming through it.

22 Q Are you skimming for the word Chong?

23 A Yeah.

24 Q To make sure we're looking for the same thing?

25 A Correct.

1                   THE COURT: Sir, just take what time you  
2                   need. If you need additional time, and I know  
3                   Attorney Vishny will give you that time, take what  
4                   time you need and look at it carefully.

5       Q       (BY ATTORNEY VISHNY) I tend to kind of get going  
6                   fast, so just say slow down please. You don't even  
7                   have to put the please in there.

8                   All right. Now, Page 16. Okay? Still nothing.  
9                   Okay? Right?

10      A       Right.

11      Q       All right. And again on Page 17, again I'm not  
12                   asking you to read what's on here, just, again, you  
13                   don't see anything about Chong Lee, right?

14      A       Right.

15      Q       Okay. All right. Now I'm going to get to the point  
16                   all the way where I was asking you about Sergeant Lee  
17                   (sic) saying to you that, you know, we're not just  
18                   talking about a fight or a car break-in, they're  
19                   talking about a murder, right?

20      A       Right.

21      Q       And at that point Sergeant Thao says to you, look,  
22                   it's important for you to be honest, right?

23      A       Right.

24      Q       So are you feeling at that point when he says that  
25                   like maybe he's not believing you?

1 A I don't remember.

2 Q Okay. Not a problem.

3 Now, then he suggests to you on the bottom of  
4 Page 18, doesn't he tell you at this point that where  
5 the bang went on that he thinks you know who caused  
6 the bang, right?

7 A Right.

8 Q And this is after you have told Sergeant Thao you're  
9 glad it's him because you're worried about generally  
10 dealing with police officers, right?

11 A Right.

12 Q Okay. I'm just going to leave that up there for a  
13 second. I didn't mean to do that.

14 Now, do you recall later on telling Sergeant  
15 Thao that you don't know who the shooter is?

16 A I don't remember.

17 Q Okay. So we'll have to keep going through this. Do  
18 you remember saying that as people are leaving the  
19 shooter could be anyone in the area?

20 A I don't remember.

21 Q Okay. All right. So we're going to go -- we're on  
22 Page 19, right?

23 A Right.

24 Q Okay. And again Sergeant Thao is -- again, on Page  
25 20 you don't see any mention of the word Chong, do

1           you?

2     A     Correct.

3     Q     Okay. And then on Page 21 he says to you, I want you  
4           to be honest, you're not here to snitch, you're here  
5           to tell the truth, right?

6     A     Right.

7     Q     And then he says to you, why do you think that person  
8           is in jail right now, correct?

9     A     Correct.

10    Q     And you knew when he said, why do you think that  
11          person is in jail right now, that he was referring to  
12          Chong Lee, correct?

13    A     Correct.

14    Q     And you knew that he wanted you to say that Chong Lee  
15          was involved in this shooting, right?

16    A     Right.

17    Q     And you told him that eventually, right?

18    A     I believe so.

19    Q     Okay. All right. So he says to you, I think you  
20          know who that person is, right?

21    A     Right.

22    Q     And then you say, uh-huh, I do. Right?

23    A     Correct.

24    Q     Okay. That's Page 21. Still no -- okay.

25           Now, on Page 22 do you see the word Chong

1 finally appear in the transcript of your  
2 interrogation by Sergeant Thao?

3 A Yes, I do.

4 Q Okay. Who is it who mentions -- does this help  
5 refresh your memory about who first brings Chong  
6 Lee's name into this discussion?

7 A Officer Thao.

8 Q Okay. And it's not you, right?

9 A Right.

10 Q And what he says to you is, obviously the person to  
11 talk about is Chong, right?

12 A Right.

13 Q And then he tells you, you saw him coming from this  
14 area, right?

15 A Correct.

16 Q And when Sergeant Thao said to you, you saw him  
17 coming from this area, he was referring to the  
18 diagram that he had drawn, right?

19 A Right.

20 Q And you went along with what he was saying.

21 A Right.

22 Q And what you said to him as he's asking you about  
23 walking is, you respond to him and you say, I just  
24 see him, and then there's something inaudible, I  
25 didn't know he was a gunman, I didn't know he was the

1 shooter, I just don't know. Everything was just like  
2 happening. And then he -- Sergeant Thao says right.  
3 Right?

4 A Correct.

5 Q And then you say, everything was just happening, you  
6 go back to your sentence, so quickly, and then there  
7 was a bang, right?

8 A Right.

9 Q And then he starts to ask you some questions about  
10 who Chong Lee was with?

11 A Right.

12 Q Do you remember telling him that Chong Lee was with  
13 Alyson and Michael Thor?

14 A It appears to say so.

15 Q Okay. That's Page 23.

16 And that -- do you then see him saying, Page 24,  
17 right before the 20:14, that you see them walking  
18 through and then later, and he suggests to you it's  
19 ten seconds, 14 seconds, 15 seconds, that later  
20 that's when you hear the boom, right?

21 A Correct.

22 Q Okay. And what you said then is you saw what  
23 happened, you didn't know it was the shooter, you  
24 didn't know who the shooter was, there's a lot of  
25 people walking by and it just went boom and you

1           didn't see who it was, right?

2     A     Right.

3     Q     You don't say anything about Chong punching the  
4           victim at that time.

5     A     Right.

6     Q     All right. But what you do say is that you didn't  
7           know who the gunman was but, yeah, it's been all over  
8           the news and Facebook, right?

9     A     Right.

10    Q     So of course by the time you're talking to Sergeant  
11           Thao, because it's been all over the news and  
12           Facebook, you're assuming it's Chong Lee, right?

13    A     Correct.

14    Q     It's not because you saw it.

15    A     I don't remember.

16    Q     You don't remember. That's fine.

17           Okay. I'm just going to keep going page by  
18           page. I'm not going to ask you a question about  
19           every single page, okay, because it's going to be way  
20           too tedious.

21           Now, Page 25 don't see any -- you're on a  
22           discussion about something else at that point about  
23           the victim, about Josh and where you saw him?

24    A     Right.

25    Q     Are you -- you have enough time to look?

1 A Yeah. I'm just skimming through it.

2 Q Page 26, same thing?

3 A Yup.

4 Q Okay. Page 27 you're now talking -- he then  
5 interviews you about what you see when you go  
6 outside, you know, the things you testified here  
7 about seeing a fight, walking home?

8 A Right.

9 Q Okay. And then he starts to ask you some questions  
10 about people you saw and who you thought did it,  
11 right?

12 A Right.

13 Q Do you remember him asking you if you thought Alyson  
14 did it?

15 A I don't remember.

16 Q Okay. You don't remember, but now that you see the  
17 transcript, you can see that Sergeant Thao says to  
18 you, go back in time, do you think Alyson did it.  
19 And you say, pulled the gun. And he says yeah. And  
20 you say no.

21 A Yes.

22 Q Correct?

23 A Correct.

24 Q Okay. And then later on, you know, there is some  
25 discussion about other matters, and on Page 29 then



1           you say, it could have been Chong, could have been  
2           Michael, I don't know, right?

3     A     Right.

4     Q     And what you tell him is you had no idea who it was  
5           at the time, right?

6     A     Right.

7     Q     And on the bottom of Page 29, the last thing you say  
8           then is, yeah, it could have been, like, anybody,  
9           like you had said, correct?

10    A     Correct.

11    Q     And again, you repeat on Page 30, it could have been  
12           anybody who was in that area because there were so  
13           many people there, right?

14    A     Right.

15    Q     And that you didn't know at the time?

16    A     Right.

17    Q     But when the boom came, it was, as far as you knew,  
18           after the three of them had walked past you, correct?

19    A     Correct.

20    Q     So -- and again, going back up to Exhibit 102, you  
21           are all the way up in the very top corner, right?

22    A     Right.

23    Q     And if these people are walking past you, all you  
24           know is you hear the boom sometime right after,  
25           right?

1 A Right.

2 Q So of course there is an association in your mind  
3 between those people and the boom?

4 A Right.

5 Q But you don't see Chong shoot him?

6 A Right.

7 Q Okay. Now -- now going to Page 31, okay, this keeps  
8 going on, and, Tou, he's encouraging you, continuing  
9 to encourage you to name Chong as the shooter, right?

10 A Right.

11 Q And the way he does it is he says, look, you're not  
12 the first person to name him as the shooter, right?  
13 He tells you that?

14 A Right.

15 Q And so in other words, in your mind you realize,  
16 okay, I can say this, Chong is in jail, right?

17 A Right.

18 Q It's okay to say this?

19 A Right.

20 Q But you didn't see him do the shooting?

21 A I don't know.

22 Q You don't know. Okay. All right.

23 Then there is some continued discussion looking  
24 at Page 32, right?

25 A Right.

1 Q And at this point you say you didn't see him when he  
2 pulled out the gun or shot him or anything like that,  
3 right?

4 A Right.

5 Q And what you mean isn't that you saw him pull out a  
6 gun and that you didn't see it, just that you never  
7 saw a gun, period, at this point, right?

8 A Right.

9 Q Okay. So you don't really know if he pulled out the  
10 gun or not, right?

11 A Right.

12 Q Okay. Now, I'm going to Page 33. So this discussion  
13 is still going on, and now Sergeant Thao talks to you  
14 about -- he tells you you had a great view, right?

15 A Right.

16 Q And what he tells you is whether you like it or not,  
17 whether you want to or not, you really don't have a  
18 choice at this point of going down the road. 33. Do  
19 you remember that?

20 A I don't remember.

21 Q Okay. Do you recall him saying to you, the court is  
22 going to subpoena you to testify, right?

23 A Right.

24 Q And that he doesn't want -- he wants to be honest and  
25 up front, he doesn't want to lead you on, and, you

1 know, down the road say I don't have to testify  
2 because you were right there watching, and he tells  
3 you it's better to let him know now than play around,  
4 right?

5 A Right.

6 Q And you say yes. And then Sergeant Thao says to you,  
7 I think I'm easier to you, and the other thing, if  
8 the court have that information or the DA have that  
9 information, they may or may not need you. You know  
10 what I'm saying? Rather than, yeah, he's been giving  
11 me anything but he's leaving this out, they might  
12 just, you know what I'm saying, other people have  
13 been honest so I don't want you to think you're the  
14 only one. So I am saying is that you saw who  
15 approached, and you're shaking your head yes,  
16 right?

17 A Right.

18 Q Okay. And then he says, well, I'm not saying that  
19 you knew it was gonna happen, because I would be  
20 shocked too, right?

21 A Right.

22 Q So Sergeant Thao is leading you into making this  
23 statement about Chong Lee, right?

24 A Right.

25 Q And you pretty much felt you had no choice but to say

1 this, didn't you?

2 A Correct.

3 Q And then you continue to talk, and on Page 34 it's  
4 Sergeant Thao who says, what I'm saying is you saw  
5 who approached Josh, whether he was gonna fight him,  
6 help Chong, Paul was there or not, but you saw him,  
7 and then you go, um-hum, right?

8 A Right.

9 Q And so he's continuing to lead you to say you saw  
10 Chong, right?

11 A Right.

12 Q Now I'm asking you some leading questions too,  
13 right?

14 A Right.

15 Q But when Sergeant Thao was leading you, there wasn't  
16 like another lawyer to object or a judge to say that  
17 was unfair, right?

18 A Right.

19 Q Just you and Sergeant Thao?

20 A Correct.

21 Q Okay. Next page, we're on 35, and you said, after it  
22 happened we all just froze for a second, right?

23 A Right.

24 Q And then you talk about it being smoky, like maybe  
25 from the gun, and that you leave, right?

1 A Right.

2 Q Okay. And then Sergeant Thao tells you he would like  
3 to take your jacket, right?

4 A Right.

5 Q Just to see if maybe there is some physical evidence  
6 on it like just about ten days after this has  
7 happened or twelve days after this has happened,  
8 right?

9 A Right.

10 Q Okay. And you give it to him.

11 Okay. And then you say you didn't want to have  
12 anything to do with it, right?

13 A Right.

14 Q And you hope nothing would come back to you, Page 37,  
15 or anything, right?

16 A Right.

17 Q And he says, no, from his standpoint as an officer, I  
18 don't think so, and you just need to tell the truth,  
19 that's what he tells you, right?

20 A Right.

21 Q Okay. And then again he says, you're not making  
22 anything up, you're not creating things, and again he  
23 mentions Chong's name, correct?

24 A Correct.

25 Q Okay. Page 37, turning to Page 38. Do you remember

1           him saying to you that when Chong approached Josh,  
2           did you notice where Alyson or Michael Thor were at  
3           the time. Do you remember that?

4     A     I don't remember.

5     Q     Okay. Do you remember you saying, no, you thought  
6           they were just like blocking, it kind of looked like  
7           they were just gonna leave Luna, right?

8     A     Correct.

9     Q     And, again, it's Sergeant Thao who says, did you see  
10          -- you say Chong approach Josh and that's when things  
11          go boom. And he starts to ask you, did you see his  
12          hand, did he have anything in his hand, did he do  
13          anything with his hand. Right?

14    A     Right.

15    Q     And then for the first time getting near the end of  
16          this interview that's when you say you thought Chong  
17          was going to punch the victim, right?

18    A     Right.

19    Q     Hadn't said it until this point, right?

20    A     Right.

21    Q     Because you hadn't seen it, right?

22    A     Right.

23    Q     Sergeant Thao led you to say that, correct?

24    A     Correct.

25    Q     And you had some fear that if you didn't say this,

1 something bad might happen to you with the police,  
2 right?

3 ATTORNEY SCHNEIDER: I'm going to object.  
4 It calls for speculation.

5 ATTORNEY VISHNY: He just --

6 ATTORNEY SCHNEIDER: Unless he specifically  
7 said it in the transcript.

8 THE COURT: You're calling him to speculate  
9 as to his own state of mind.

10 ATTORNEY SCHNEIDER: Her question calls for  
11 speculation, unless he specifically said that in a  
12 transcript. She can ask him how were you feeling or  
13 what did you think.

14 ATTORNEY VISHNY: Actually, this is  
15 cross-examination, I think I'm allowed to use leading  
16 questions.

17 THE COURT: I think it's -- can you read --  
18 can you read back the question please?

19 (Question read back.)

20 THE COURT: She's asking about his own  
21 state of mind. I'll allow it. It can be clarified  
22 on direct or redirect.

23 Q (BY ATTORNEY VISHNY) And you had answered the  
24 question when I asked you that?

25 A Yes.



1 Q And what was your answer?

2 A Yes.

3 Q You did have some fear that if you didn't name Chong  
4 something bad would happen to you, right?

5 A Right.

6 Q And then there is some more discussion looking at  
7 Page 38?

8 A Yup.

9 Q Okay. About this punch. Right?

10 A Right.

11 Q 39, right?

12 A Right.

13 ATTORNEY SCHNEIDER: What is he saying  
14 right to because I don't think there was a  
15 question.

16 ATTORNEY VISHNY: Okay.

17 ATTORNEY SCHNEIDER: There is lot of  
18 uh-huhs and rights.

19 Q (BY ATTORNEY VISHNY) Page 39 there is no discussion  
20 of Chong, right?

21 A Right.

22 Q But Sergeant Thao does ask you if there is anything  
23 else you would like to add, right?

24 A Yes.

25 Q Okay. And you talk about how shocking it is when you

1           see something happen with your own two eyes, right?

2     A     Right.

3     Q     Kind of comparing, it's not like a shooting game,  
4           it's real life.

5     A     Right.

6     Q     Okay. Then Sergeant Thao says that he wants to give  
7           you an opportunity to write a statement at the top of  
8           Page 40. Right?

9     A     Yes.

10    Q     Okay. And he says, I always give a statement, an  
11          opportunity to write, okay, and then you ask him  
12          whether or not you need him -- whether Sergeant Thao  
13          needs you to write it, right?

14    A     Correct.

15    Q     Okay. And Sergeant Thao tells you he prefers that  
16          you write it because if you write it you might have  
17          the choice to not have to come to court?

18    A     Right.

19    Q     Okay. And he tells you he's recorded what he's  
20          talked to you about, right?

21    A     Right.

22    Q     And then I'm going to ask you to just read the  
23          paragraph where Sergeant Thao, right here in the  
24          middle of the page, kind of a long paragraph, where  
25          he talks to you about the statement, right?

1     A     Um-hum.

2     Q     Is he telling you what to write in the statement? Do  
3            you remember?

4     A     I don't remember, but --

5     Q     You don't remember. Okay.

6            So what he says is, because first of all, I  
7            can't promise you -- I can't guarantee, but the more  
8            -- the all -- if they have all the information from  
9            you, they may then give them the choice to decide  
10           whether they need you to be in court or not. Okay?  
11           Because what we talked about and what you told me,  
12           obviously recorded. I will put that statement in my  
13           report, but then if -- and also from your perspective  
14           what you saw, what you were trying to do, which was  
15           to stop the fight before him -- before the shoo -- it  
16           looks like he's going to say shooting but he stops  
17           and says before the boom, and then what happened and  
18           what you saw Chong, Alyson and Michael Thor walking  
19           from that bar, and you saw, you know, with Chong you  
20           thought he was going to punch the guy with his right  
21           hand, and that's when the boom goes off. These  
22           things are important to put on paper as supposed to  
23           tell what happened. And you're not trying to point  
24           the finger at anybody who didn't do anything, right?  
25     A     Right.

1 Q Okay. And at this point you hadn't expressed  
2 anything to Sergeant Thao about being afraid because  
3 of your culture or your religious beliefs or anything  
4 like that?

5 ATTORNEY SCHNEIDER: Judge, I'm going to  
6 ask to approach then at this time.

7 THE COURT: You may.

8 (Bench conference.)

9 ATTORNEY VISHNY: Question is withdrawn.

10 Q (BY ATTORNEY VISHNY) Now after this you write the  
11 statement, right? Okay?

12 A Yup.

13 Q You remember that? And you remember -- do you  
14 remember -- recall at all whether or not Sergeant  
15 Thao asked you what color jacket Chong Lee had on?

16 A I don't remember.

17 Q Okay. You don't recall. But going over to Page 43,  
18 do you remember him saying, do you remember that  
19 night what Chong was wearing? Do you remember him  
20 asking you that?

21 A I don't remember.

22 Q Okay. Then -- but in the transcript it says, do you  
23 remember that night what Chong was wearing, and you  
24 said, um, a gray jacket and like a gray hat?

25 A Yes.

1 Q Okay. And then you tell him you don't remember if it  
2 was a sports jacket, whether it was Brewers, Lions or  
3 inaudible, right?

4 A Right.

5 Q And then Sergeant Thao asked you, was it gray all  
6 over or is there some different color in it?

7 A Right.

8 Q And what you say, it was like gray and you think the  
9 sleeves were dark, you don't remember anymore,  
10 right?

11 A Right.

12 Q Like a dark color, like maybe brown, you just don't  
13 know, right?

14 A Right.

15 Q And Sergeant Thao ask you if the sleeves are  
16 different than the jacket?

17 A Right.

18 Q Okay. And he actually shows you a picture, right?

19 A Correct.

20 Q And mentions that Chong Lee has on a Milwaukee  
21 Brewers hat?

22 A Right.

23 Q Correct?

24 A Right.

25 Q Okay. And it's after this then you write the

1 statement, correct?

2 A Correct.

3 Q And Sergeant Thao is present the entire time,  
4 right?

5 A Right.

6 Q But in fact, regardless of what you wrote, you didn't  
7 see a boom simultaneously with Chong Lee punching the  
8 victim, right?

9 A I don't know.

10 Q You don't know. And Sergeant Thao led you into  
11 making the statements you made, right?

12 A Right.

13 ATTORNEY VISHNY: Nothing further.

14 **EXAMINATION OF TOU SHOUA LEE**

15 **BY ATTORNEY SCHNEIDER:**

16 Q You hesitated, Tou. You told Sergeant Thao what you  
17 saw, right?

18 A I don't remember.

19 Q You don't remember? Did you tell Sergeant Thao what  
20 you saw at Luna?

21 A From what I remember, yes.

22 Q Okay. So when you talked to him, you told him what  
23 you remembered or saw?

24 A Correct.

25 Q And that's kind of what you drew on this map,

1 correct, or he drew, but he was drawing based upon  
2 what you were telling him?

3 A Correct.

4 Q And what you told us here today is what you  
5 remembered happening at Luna?

6 A Yes.

7 Q No doubt about that?

8 A As far as I know, yes.

9 Q Okay. You're not related in any way to Josh  
10 Richards?

11 A No.

12 Q And after this incident, Tou, did you talk to anybody  
13 about what you saw prior to talking to Sergeant  
14 Thao?

15 A I did not.

16 Q Did anybody talk to you and share what they saw?

17 A They did not.

18 Q So you hadn't talked to Paul Lee from the time of the  
19 incident until you talked to Sergeant Thao?

20 A Correct.

21 Q Hadn't talked to Joe Thor?

22 A Correct.

23 Q Phong Lee?

24 A Correct.

25 Q Michael Thor?

1 A Correct.

2 Q So from the time it happened, you walked home by  
3 yourself, didn't talk to anybody about what you saw  
4 until you talked to Sergeant Thao?

5 A Right.

6 Q And what you testified about today is what you  
7 remember happening?

8 A Yes.

9 ATTORNEY SCHNEIDER: Nothing further.

10 ATTORNEY VISHNY: I have nothing further.

11 THE COURT: Any of the members of the jury  
12 have any questions they wish to submit for  
13 consideration?

14 (No response.)

15 THE COURT: Very good. Sir, you may be  
16 excused.

17 ATTORNEY SCHNEIDER: I'm just going to turn  
18 some of the equipment off if that's okay.

19 THE COURT: Please rise. At this time,  
20 ladies and gentlemen, we will conclude for the  
21 evening. I would ask that you be here ready -- be  
22 here so that you're ready promptly at nine a.m.  
23 Okay? At this time you are excused.

24 (The jury was escorted out of the  
25 courtroom.)



1                   THE COURT: We did have -- recapping during  
2                   this later afternoon session, we did have several  
3                   sidebars. One was with request to Sergeant Thao to  
4                   be excused based upon the nature of questioning.  
5                   That request was granted.

6                   There was a question brought up about marijuana  
7                   or usage. In the future, if there's going to be any  
8                   reference to any sort of illegal substances in  
9                   conjunction with the question, I'd ask that you  
10                  approach beforehand so that I can make a  
11                  determination as to whether or not that should  
12                  conclude -- include other acts evidence. I do  
13                  understand that the purpose was not to introduce  
14                  other acts, but in the future, to err on the side of  
15                  caution, that is how that be prepared.

16                  There was a question related to religious and  
17                  concern about religious or cultural beliefs and  
18                  whether that would open the door to further  
19                  questioning based upon previous rulings. Ultimately  
20                  the question was withdrawn and so, in light of that  
21                  fact, it did not open any subsequent doors for  
22                  further questioning.

23                  And so those would be the summation of the three  
24                  sidebars and the rulings associated with the same.

25                  Is that your understanding of the content of

1           those sidebar discussions, Attorney Schneider?

2                   ATTORNEY SCHNEIDER:   Yes, Judge.

3                   THE COURT:   Attorney Vishny?

4                   ATTORNEY VISHNY:   Yes.

5                   THE COURT:   Okay.   Are we going to have  
6           sufficient time if the parties are here at 8:30 to  
7           address any pretrial issues that we need to address,  
8           Attorney Schneider, from your vantage point?

9                   ATTORNEY SCHNEIDER:   I'm just trying to  
10          look quickly who we might have in our lineup  
11          tomorrow.

12                   ATTORNEY VISHNY:   That would be helpful.  
13          Thanks.

14                   ATTORNEY SCHNEIDER:   Well, I don't know  
15          that I can tell you that, but I --

16                   ATTORNEY VISHNY:   I know you have Paul Lee  
17          at two p.m.

18                   ATTORNEY SCHNEIDER:   I know tomorrow I  
19          don't have any jail calls that we play, because I  
20          think that's something we still need to ferret out.

21                   THE COURT:   Correct.

22                   ATTORNEY SCHNEIDER:   There may be the  
23          letter to Paul that we need to address.   We reviewed  
24          it a little bit this morning.

25                   THE COURT:   And we're expecting Mr. Lee to

1           testify in the afternoon, correct?

2                   ATTORNEY SCHNEIDER: Yeah. And I have to  
3           check with Mr. Groh because he might be able to be  
4           here earlier. He had something at 8:45 in --

5                   ATTORNEY VISHNY: Mister who?

6                   ATTORNEY SCHNEIDER: Attorney Jonathan  
7           Groh. He had something at 8:45 in Winnebago, but I  
8           thought now he thought he could be done by 10:30 or  
9           11 so I just have to check with him.

10                  THE COURT: We may be able to address the  
11           issues related to Mr. Paul Lee in the latter part of  
12           the lunch hour.

13                  ATTORNEY SCHNEIDER: Yes, yes.

14                  THE COURT: So counsel and myself could  
15           come back early.

16                  ATTORNEY SCHNEIDER: I'm going to give you  
17           just a copy of that letter we looked at this morning  
18           so you have it to review.

19                  THE COURT: Okay.

20                  ATTORNEY VISHNY: So in the morning do you  
21           expect to call Phong Lee then?

22                  ATTORNEY SCHNEIDER: Yes. I need to check  
23           with my victim witness person. We don't have to do  
24           this on the record.

25                  ATTORNEY VISHNY: No, we don't.

1                   ATTORNEY SCHNEIDER: Is available and when.  
2           I don't know what promises she made.

3                   ATTORNEY VISHNY: I understand. If we can  
4           -- she's not here.

5                   ATTORNEY SCHNEIDER: She is but it -- we  
6           don't have to do it --

7                   (An off-the-record discussion was held.)

8                   (Proceedings concluded.)

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## C E R T I F I C A T E

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5     STATE OF WISCONSIN     )  
6     COUNTY OF OUTAGAMIE     ) ss.:

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9             I, JOAN BIESE, RMR/CRR, do hereby certify that I  
10     am the official court reporter for Branch IV of the  
11     Circuit Court of Outagamie County;

12             That as such court reporter, I made full and  
13     correct stenographic notes of the foregoing proceedings;

14             That the same was later reduced to typewritten  
15     form;

16             And that the foregoing proceedings is a full and  
17     correct transcript of my stenographic notes so taken.

15

18             Dated this 26th day of July, 2016.

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JOAN BIESE, RMR/CRR

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